

No. 13148

United States
Court of Appeals
for the Ninth Circuit.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,

Appellant,

vs.

W. J. JONES & SON, INC., a Corporation,

Appellee.

Transcript of Record

Appeals from the United States District Court,
for the District of Oregon.

FILED

FEB 12 1952

PAUL P. O'BRIEN

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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1001 Board of Trade Bldg.,

Portland, Oregon,

For Appellee.

In the United States District Court
for the District of Oregon

Civil No. 5758

W. J. JONES & SON, INC.,

Plaintiff,

vs.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,

Defendant.

DOCKET ENTRIES

1950

Sept. 27—Filed complaint.

Sept. 27—Issued summons—to marshal.

Oct. 3—Filed summons with marshal's return.

Nov. 24—Filed answer.

1951

Feb. 12—Entered order setting for pretrial conference on March 26, 1951.

Mar. 26—Entered order setting for pretrial conference on April 2, 1951.

Apr. 2—Record of pretrial conf. & order setting for further pretrial conf. on April 9, at 2:00 p.m.

Apr. 9—Record of pretrial conf.

Apr. 10—Entered order setting for trial on May 15, 1951.

May 7—Filed & entered pretrial order.

May 15—Entered order permitting A. F. Oehmann to appear specially for deft; record of trial before court.

1951

- May 16—Record of trial before court; argument & order taking under advisement.
- June 12—Filed & entered Findings of Fact, Conclusions of Law and Judgment for plaintiff.
- June 12—Filed exhibits.
- June 30—Filed transcript of testimony of May 15-16, 1951.
- Aug. 8—Filed notice of appeal by defendant and copy mailed to attys. for plaintiff.
- Sept. 14—Filed motion of U. S. for extension of time to file appeal.
- Sept. 14—Filed & entered order extending time 90 days from first appeal date.
- Oct. 24—Filed designation of contents of record on appeal.
- Oct. 31—Filed affidavit of service of copy of designation.
- Oct. 31—Filed stipulation for order for clerk to transmit exhibits to U. S. Court of Appeals.
- Oct. 31—Filed and entered order for clerk to transmit exhibits to U. S. Court of Appeals.

[Entries in Civil Docket No. 5759 are identical to the foregoing.]

In the United States District Court for the
District of Oregon

Civil No. 5758-94-8

W. J. JONES & SON, INC.,

Plaintiff,

vs.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,

Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action
alleges:

I.

Plaintiff, W. J. Jones & Son, Inc., is a corporation duly organized and existing under the laws of the State of Oregon, maintaining its principal office in Portland, Oregon, and brings this action to recover a refund of income taxes illegally collected or retained by defendant Collector of Internal Revenue. Jurisdiction of this Court exists by virtue of 28 U.S.C. Sec. 1340.

II.

The defendant, Hugh H. Earle, was on and subsequent to September 1, 1947, and now is the duly appointed and acting Collector of Internal Revenue for the District of Oregon.

III.

On or about March 15, 1949, plaintiff filed its

income tax return for the calendar year 1948 in conformity with the Internal Revenue Code of the United States which return discloses a net operating loss of \$138,379.48.

IV.

Under Internal Revenue Code Sec. 122 plaintiff is entitled to carry back to 1946 said 1948 operating loss of \$138,378.48, and the net operating loss deduction resulting from such carry-back completely absorbs all of plaintiff's 1946 net income entitling plaintiff to a refund of the 1946 income taxes paid by plaintiff in the sum of \$12,190.32. Said 1946 income taxes in the sum of \$12,190.32, disclosed on the 1946 income tax return duly filed by plaintiff on or about March 15, 1947, were paid by plaintiff in installments of \$3,500.00 on March 14, 1947; \$3,500.00 on June 14, 1947, and \$5,190.32 on September 13, 1947. Refund is herein sought for the \$5,190.32 of said \$12,190.32 paid by plaintiff to defendant on September 13, 1947. Refund of the \$3,500.00 paid by plaintiff on March 14, 1947, and June 14, 1947, is sought in an action against the United States of America filed simultaneously with this complaint.

V.

The net operating loss deduction resulting from the \$138,378.48 net operating loss for 1948 is only partially absorbed by plaintiff's 1946 net income, and under the provisions of Internal Revenue Code Sec. 122 plaintiff is entitled to deduct from 1947 income the portion of said net operating loss de-

duction which remains after eliminating plaintiff's 1946 net income. Said 1947 net operating loss deduction entitles plaintiff to a refund of \$38,030.29 of the income taxes paid by plaintiff for the year 1947. Income taxes in the sum of \$154,791.75 disclosed on the 1947 income tax return duly filed by plaintiff on or about March 15, 1948, were paid by plaintiff in installments on March 15, 1948; June 15, 1948; September 15, 1948; October 1, 1948, and December 10, 1948.

VI.

On or about November 2, 1949, plaintiff duly filed with defendant a refund claim for income taxes in the sum of \$12,690.32 paid by plaintiff for the calendar year 1946, and a refund for \$38,030.29 of the income taxes paid by plaintiff for the calendar year 1947. Said refund claims for 1946 and 1947 set forth the reasons for the allowance of said claims together with the computations of the amounts thereof, and said refund claim for 1946, attached to the complaint filed by plaintiff against the United States of America, and said refund claim for 1947, hereto attached as Exhibit A, are incorporated herein by reference as though fully set forth in this complaint.

VII.

The net operating loss in the sum of \$138,379.48 disclosed by plaintiff's 1948 income tax return is the basis for substantially all the amount for which refund is herein sought. Of said \$138,379.48 net operating loss, \$134,555.21 constitutes a bad debt deduction under I.R.C. Sec. 23 (k).

VIII.

The 1948 bad debt deduction in the sum of \$134,555.21 is based upon the worthlessness of certain 6 per cent demand notes acquired by plaintiff in 1946 for the sum of \$121,763.74, the face amount of said notes plus accrued interest to the date of acquisition. The notes were issued by Mina del Refugio, a Mexican corporation at Hermosillo, Sonora, Mexico, to secure loans made to said corporation. Gold and silver mining operations carried on by said corporation were curtailed and finally terminated in the latter part of 1948 when the original veins of ore were unexpectedly exhausted and all attempts to discover additional ore were unsuccessful. At a meeting held on December 27, 1948, the board of directors of said corporation ratified the termination of all operations and confirmed the sale of all equipment pursuant to a contract previously entered into, and further directed the immediate abandonment of all real property, mining claims and all other assets of said corporation including the corporate structure. At said meeting the directors determined that not more than \$22,500.00 could be salvaged from the corporation, and directed that any amount so realized should be distributed pro rata to the holders of the outstanding notes of the corporation. The notes owned by taxpayer for the indebtedness of \$121,763.74 constituted 39 per cent of the total indebtedness of \$308,378.39 secured by notes of said corporation. The pro rata distribution of said \$22,500.00 entitled the plaintiff to payment of an amount not in excess of \$8,775.00 (39

per cent of \$22,500.00) upon said indebtedness of \$121,763.74, leaving the debts totally worthless in the amount of \$112,988.74, (\$121,763.74 less \$8,775.00). While plaintiff held said notes it accrued interest thereon in the amount of \$21,566.47 which added to said sum of \$112,988.74 constitutes the bad debt deduction of \$134,555.21.

IX.

Said notes constituted valid debts of Mina del Refugio and were not subordinated to creditors, nor did said notes provide for payment only out of the earnings of said corporation. Shares of the common stock of Mina del Refugio were owned by persons other than those making loans to said corporation and it was the intention of parties that the loans should be repaid to the lenders before any profits were distributed to the stockholders. Consequently stock could not have been issued in lieu of said notes.

X.

It was the intention of the parties concerned that said notes should constitute valid debts of Mina del Refugio and they were so treated by plaintiff and by said corporation. One indication of such intent is the fact that plaintiff accrued the interest upon said notes and plaintiff paid an income tax thereon.

XI.

The Commissioner of Internal Revenue has not mailed to plaintiff by registered mail any notice of

the disallowance of said refund claims although plaintiff has received letters from the Internal Revenue Agent in Charge, Seattle, Washington, dated March 10, 1950, which propose substantial disallowance of said refund claims on the ground that the notes represent contributions to capital of Mina del Refugio rather than debts of said corporation. More than six months have elapsed since the filing of said refund claims by plaintiff.

XII.

The income tax for which refund is herein claimed is being withheld from plaintiff because of the action of defendant in illegally and erroneously denying plaintiff the aforementioned net operating deductions to which plaintiff is entitled for the years 1946 and 1947.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$43,220.61 plus interest and costs, said sum of \$43,220.61 being \$5,190.32 for 1946 income taxes and \$38,030.29 for 1947 income taxes.

WILBUR, BECKETT, OPPEN-
HEIMER, MAUTZ & SOUTHER.

By /s/ WILLIAM H. KINSEY,
Attorneys for Plaintiff.

EXHIBIT A

Form 843

Treasury Department

Internal Revenue Service

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp (Date received):.....

State of Oregon,

County of Multnomah—ss. .

Name of taxpayer or purchaser of stamps:

W. J. Jones & Son, Inc.

Business Address:

817 Board of Trade Bldg., Portland, Oregon.

Residence:

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Oregon.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year): From Jan. 1, 1947, to Dec. 31, 1947.
3. Character of assessment or tax: Income taxes.
4. Amount of assessment, \$154,791.75; dates of payment, 1948.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$38,030.29.
7. Amount to be abated (not applicable to income, gift, or estate taxes): \$.
8. The time within which this claim may be legally filed expires, under Section 322 of I.R.C., on March 15, 1950.

The deponent verily believes that this claim should be allowed for the following reasons:

1. There is a net operating loss deduction in 1947 attributable to the carry-back of a net operating loss sustained in 1948 to 1946 and the carry-forward from 1946 of the amount of the net operating loss deduction not absorbed by 1946 net income to 1947 (see attached).

/s/

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund

Calendar Year 1947

Net operating loss shown on 1947 Corporation	
Income tax return	\$138,379.48
Less: Contributions deducted on return not allowable under limitations of Sec. 23(q)	
I. R. C.	446.00
Net operating loss shown on return, as adjusted.....	\$137,933.48
Less: Adjustments required by Sec. 122(d) I.R.C.	—
Statutory net operating loss for 1948.....	\$137,933.48
Carry-back of 1948 net operating loss to 1946.....	\$137,933.48
Less: 1946 net income adjusted	37,853.75
Net operating loss deduction available to carry-back to 1947	\$100,079.73
Reduction under Sec. 122(d) I. R. C.:	
Net income for 1947 disclosed by return	\$407,346.72
Adjustments under Sec. 122(d)	
I. R. C.	—
Net income adjusted	\$407,346.72
Less: Normal tax net income	407,346.72
Excess of net income adjusted over normal tax net income	—
Net operating loss deduction applicable to 1947.....	\$100,079.73
Normal tax net income shown by return	\$407,346.72
Less: Net operating loss deduction.....	100,079.73
Normal tax net income adjusted	\$307,266.99
Normal tax, as adjusted	\$ 73,744.08
Surtax, as adjusted	43,017.38
Tax liability as adjusted	\$116,761.46
Tax liability shown on return	154,791.75
Decrease	\$ 38,030.29

State of Oregon,
County of Multnomah—ss.

I, Clayton R. Jones, being first duly sworn, depose and say that I am President of W. J. Jones & Son, Inc., plaintiff in the above-entitled action; and that the foregoing complaint is true as I verily believe.

/s/ CLAYTON R. JONES.

Subscribed and sworn to before me this 27th day of September, A.D. 1950.

[Seal] /s/ WILLIAM H. KINSEY,
Notary Public for the
State of Oregon.

My Commission expires 12/21/52.

[Endorsed]: Filed Sept. 27, 1950.

[Title of District Court and Cause.]

Civil No. 5758

ANSWER

Defendant answers as follows:

I.

Admits the allegations contained in Paragraph I of the Complaint except denies that the taxes sought to be recovered, or any portion thereof, were illegally collected or retained.

II.

Admits the allegations contained in Paragraph II of the Complaint.

III.

Denies all the allegations contained in Paragraph III of the Complaint except admits that on or about March 15, 1949, plaintiff filed its Income Tax Return for the Calendar Year 1948 in which there was disclosed an alleged operating loss in the amount of \$138,379.48.

IV.

Denies all of the allegations contained in Paragraph IV of the Complaint except admits that the returned 1946 income taxes, in the alleged amount, were paid in installments on or about the dates alleged.

V.

Denies all of the allegations contained in Paragraph V of the Complaint except admits that the returned 1947 income taxes, in the alleged amount, were paid in the installments and on or about the dates alleged.

VI.

Denies all of the allegations contained in Paragraph VI of the Complaint except admits that plaintiff filed with the Collector of Internal Revenue for the District of Oregon on November 4, 1949, an instrument in writing purporting to be a claim for refund for the calendar year 1946, in the amount of \$12,190.32, and on the same date filed with the Collector of Internal Revenue for the District of

Oregon an instrument in writing purporting to be a claim for refund for the calendar year 1947, in the amount of \$38,030.29, and admits that Exhibit "A" to the Complaint is a true copy thereof.

VII.

Denies all of the allegations contained in Paragraph VII of the Complaint.

VIII.

Defendant specifically denies that plaintiff is entitled to a bad debt deduction in the amount alleged, or in any other amount. Further answering the allegations of Paragraph VIII of the Complaint, defendant avers that he is without knowledge or information sufficient to form a belief as to the truth of any of the remaining allegations contained in that paragraph.

IX.

Denies all of the allegations contained in Paragraph IX of the Complaint.

X.

Denies all of the allegations contained in Paragraph X of the Complaint.

XI.

Admits the allegations contained in Paragraph XI of the Complaint.

XII.

Denies all of the allegations contained in Paragraph XII of the Complaint.

Wherefore, having fully answered, defendant prays judgment and costs.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

/s/ DONALD W. McEWEN,

Assistant United States
Attorney.

United States of America,
District of Oregon—ss.

I, Donald W. McEwen, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Answer on the plaintiff herein by depositing a duly certified copy thereof in the United States Post Office at Portland, Oregon, on November 24, 1950, said copy being enclosed in an envelope with postage thereon prepaid, addressed to Messrs. Wilbur, Beckett, Openheimer, Mautz & Souther; William H. Kinsey, Attorneys at Law, 1001 Board of Trade Building, Portland 4, Oregon, attorneys of record for plaintiff herein.

/s/ DONALD W. McEWEN,

Assistant United States
Attorney.

[Endorsed]: Filed Nov. 24, 1950.

In the United States District Court
for the District of Oregon

Civil No. 5759

W. J. JONES & SON, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action alleges:

I.

Plaintiff, W. J. Jones & Son, Inc., is a corporation duly organized and existing under the laws of the State of Oregon, maintaining its principal Office in Portland, Oregon, and brings this action to recover a refund of income taxes and excess profits taxes collected from plaintiff by the Collector of Internal Revenue for the District of Oregon.

II.

The taxes for which refund is herein sought were collected by J. W. Maloney who at all times herein concerned prior to September 1, 1947, was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon. Said J. W. Maloney was not in office as Collector of Internal Revenue for the District of Oregon when this action was commenced and has not been in such office

since September 1, 1947. Jurisdiction of this Court exists by virtue of 28 U.S.C. Section 1346.

III.

On or about March 15, 1949, plaintiff filed its income tax return for the calendar year 1948 in conformity with the Internal Revenue Code of the United States which return discloses a net operating loss of \$138,379.48.

IV.

Under Internal Revenue Code Sec. 122 plaintiff is entitled to carry-back to 1946 said 1948 operating loss of \$138,378.48, and the net operating loss deduction resulting from such carry-back completely absorbs all of plaintiff's 1946 net income entitling plaintiff to a refund of all the 1946 income taxes paid by plaintiff in the sum of \$12,190.32. Said 1946 income taxes in the sum of \$12,190.32, disclosed on the 1946 income tax return duly filed by plaintiff on or about March 15, 1947, were paid by plaintiff in installments of \$3,500.00 on March 14, 1947; \$3,500.00 on June 14, 1947, and \$5,190.32 on September 13, 1947. Refund is herein sought for the \$7,000.00 of said \$12,190.32 paid by plaintiff to J. W. Maloney, then Collector of Internal Revenue for the District of Oregon. Refund of the \$5,190.32 paid by plaintiff on September 13, 1947, is sought in an action against Hugh H. Earle, Collector of Internal Revenue, filed simultaneously with this complaint.

V.

Elimination of plaintiff's 1946 net income by the net operating loss deduction carried back from 1948 results in an unused excess profits credit which under the provisions of Sec. 122 of the Revenue Act of 1945 may be carried back from 1946 to 1944. Application of said unused excess profits credit adjustment against plaintiff's 1944 excess profits net income reduces plaintiff's 1944 income subject to excess profits tax and increases plaintiff's income subject to normal and surtax resulting in the overpayment by plaintiff of excess profits tax for 1944 in the amount of \$30,865.50 and producing a deficiency in 1944 normal and surtax in the amount of \$14,947.00, leaving a difference of \$15,918.50 for which refund is herein claimed. Excess profits taxes in the sum of \$49,871.47, disclosed on the 1944 return duly filed by plaintiff on or about March 15, 1945, were paid by plaintiff (less postwar credit) in installments on March 14, 1945; June 14, 1945; September 15, 1945, and December 14, 1945.

VI.

On or about November 2, 1949, plaintiff duly filed with the Collector of Internal Revenue for the District of Oregon a refund claim for income taxes paid for the calendar year 1946 in the amount of \$12,190.32 and a refund claim for \$30,865.50 of the excess profits taxes paid by plaintiff for the calendar year 1944. Said refund claims for 1946 and 1944 set forth the reasons for the allowance of said claims together with the computations of

the amounts thereof, and said refund claims for 1946 and 1944 hereto attached as Exhibits A and B, respectively, are incorporated herein by reference as though fully set forth in this complaint.

VII.

The net operating loss in the sum of \$138,379.48 disclosed by plaintiff's 1948 income tax return is the basis for substantially all the amount for which refund is herein sought. Of said \$138,379.48 net operating loss \$134,555.21 is a bad debt deduction under I.R.C. 23 (k).

VIII.

The 1948 bad debt deduction in the sum of \$134,555.21 is based upon the worthlessness of certain 6 per cent demand notes acquired by plaintiff in 1946 for the sum of \$121,763.74, the face amount of said notes plus accrued interest to the date of acquisition. The notes were issued by Mina del Refugio, a Mexican corporation at Hermosillo, Sonora, Mexico, to secure loans made to said corporation. Gold and silver mining operations carried on by said corporation were curtailed and finally terminated in the latter part of 1948 when the original veins of ore were unexpectedly exhausted and all attempts to discover additional ore were unsuccessful. At a meeting held on December 27, 1948, the board of directors of said corporation ratified the termination of all operations and confirmed the sale of all equipment pursuant to a contract previously entered into, and further directed the im-

mediate abandonment of all real property, mining claims and all other assets of said corporation including the corporate structure. At said meeting the directors determined that not more than \$22,500.00 could be salvaged from the corporation, and directed that any amount so realized should be distributed pro rata to the holders of the outstanding notes of the corporation. The notes owned by taxpayer for the indebtedness of \$121,763.74 constituted 39 per cent of the total indebtedness of \$308,378.39 secured by notes of said corporation. The pro rata distribution of said \$22,500.00 entitles the plaintiff to payment of an amount not in excess of \$8,775.00 (39 per cent of \$22,500) upon said indebtedness of \$121,763.74, leaving the debts totally worthless in the amount of \$112,988.74 (\$121,763.74 less \$8,775.00). While plaintiff held said notes it accrued interest thereon in the amount of \$21,566.47 which added to said sum of \$112,988.74 constitutes the bad debt deduction of \$134,555.21.

IX.

Said notes constituted valid debts of Mina del Refugio and were not subordinated to creditors, nor did said notes provide for payment only out of the earnings of said corporation. Shares of the common stock of Mina del Refugio were owned by persons other than those making loans to said corporation and it was the intention of parties concerned that the loans should be repaid to the lenders before any profits were distributed to the stockholders. Consequently stock could not have been issued in lieu of said notes.

X.

It was the intention of the parties concerned that said notes should constitute valid debts of Mina del Refugio and they were so treated by plaintiff and by said corporation. One indication of such intent is the fact that plaintiff accrued the interest upon said notes and plaintiff paid an income tax thereon.

XI.

The Commissioner of Internal Revenue has not mailed to plaintiff by registered mail any notice of the disallowance of said refund claims although plaintiff has received letters from the Internal Revenue Agent in Charge, Seattle, Washington, dated March 10, 1950, which propose substantial disallowance of said refund claims on the ground that the notes represent contributions to capital of Mina del Refugio rather than debts of said corporation. More than six months have elapsed since the filing of said refund claims by plaintiff.

Wherefore, plaintiff demands judgment against defendant for the sum of \$22,918.50, plus interest and costs, said sum of \$22,918.50 being \$7,000.00 for 1946 income taxes and \$15,918.50 for 1944 excess profits taxes (\$30,865.50 less \$14,947.00).

WILBUR, BECKETT, OPPEN-
HEIMER, MAUTZ & SOUTHER.

By /s/ WILLIAM H. KINSEY,
Attorneys for Plaintiff.

EXHIBIT A

Form 843

Treasury Department

Internal Revenue Service

CLAIM

To Be Filed With the Collector Where
Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp (Date received):

State of Oregon,

County of Multnomah—ss.

Name of taxpayer or purchaser of stamps:

W. J. Jones & Son, Inc.

Business Address:

817 Board of Trade Bldg., Portland, Oregon.

Residence:

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Oregon.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year): from Jan. 1, 1946, to Dec. 31, 1946.
3. Character of assessment or tax: Income taxes.
4. Amount of assessment, \$12,190.32; dates of payment, 1947.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$12,190.32.
7. Amount to be abated (not applicable to income, gift, or estate taxes): \$.
8. The time within which this claim may be legally filed expires, under Section 322 of I.R.C., on March 15, 1952.

The deponent verily believes that this claim should be allowed for the following reasons:

1. Oregon excise tax of \$1,021.66 plus interest of \$71.52, a total of \$1,093.18, representing excise tax on 1946 income, was paid in 1948, and under the accrual method of accounting is deductible from 1946 income for Federal Income tax.

2. There is a net operating loss deduction attributable to the carry-back of a net operating loss sustained in 1948 that totally absorbs 1946 income, thereby reducing it to zero (see attached).

/s/

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund	Calendar Year 1946	
Net operating loss shown on 1948 Corporation Income tax return		\$138,379.48
Less: Contributions deducted on return not allowable under limitation of Sec. 23(q)		
I. R. C.		446.00
		<hr/>
Net operating loss shown on return, as adjusted..		\$137,933.48
Less: Adjustments required by Sec. 122(d),		
I. R. C.		—
		<hr/>
Statutory net operating loss for 1948		\$137,933.48
		<hr/>
Carry-back of 1948 net operating loss to 1946		\$137,933.48
Reduction under Sec. 122(c), I. R. C.		
Net income for 1946 disclosed by return		\$37,811.93
Less: Additional Oregon Excise Tax for 1946, paid in 1948, deductible in 1946 under accrual method of accounting	1,093.18	
		<hr/>
		\$36,718.75
Adjustments under Sec. 122 (d), I. R. C.		—
		<hr/>
Net income adjusted		\$36,718.75
Less: Normal tax income, shown by return....		\$37,811.93
Less: Additional Oregon Excise tax	1,093.18	36,718.75
		<hr/>
Excess of net income adjusted over normal tax net income		—
		<hr/>
Net operating loss deduction applicable to 1946		\$137,933.48
Less: 1946 net income adjusted.....		\$36,718.75
Plus: Contributions not deductible under the limitation of Sec. 23(q)		
I. R. C., after net operating loss deduction	1,135.00	37,853.75
		<hr/>
Net operating loss carry-back to 1947....		\$100,079.73

Net income shown on return	\$ 37,811.93
Less: Technical adjustment for additional 1946 Oregon Excise tax.....	1,093.18
	<hr/>
Net income shown on return, as adjusted	\$ 36,718.75
Net operating loss deduction	137,933.48
	<hr/>
Net income adjusted	—
	<hr/> <hr/>
Tax liability shown on return	\$ 12,190.32
Tax liability as adjusted	—
	<hr/>
Overassessment	\$ 12,190.32

EXHIBIT B

Form 843

Treasury Department

Internal Revenue Service

CLAIM

To Be Filed With the Collector Where
Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp (Date received):

State of Oregon,
County of Multnomah—ss.

Name of taxpayer or purchaser of stamps:

W. J. Jones & Son, Inc.

Business address:

817 Board of Trade Bldg., Portland, Oregon.

Residence:

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed:
Oregon.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1944, to Dec. 31, 1944.
3. Character of assessment or tax: Excess Profits tax.
4. Amount of assessment, \$49,871.47; dates of payment, 1945.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$30,865.50.
7. Amount to be abated (not applicable to income, gift, or estate taxes):
8. The time within which this claim may be legally filed expires, under Section 322 (b) of I.R.C., on March 15, 1952.

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer reported on its Corporation Income Tax Return for the year 1946 a net income of \$37,811.93. The net income for the year 1946 was totally absorbed by a net operating loss deduction resulting from a net operating loss sustained for the year 1948. The 1946 net income as adjusted for the net operating loss deduction is zero and the taxpayer has available an unused excess profits credit of \$36,100.00 as computed by use of the income credit method (per RAR for 1944, dated January 22, 1948), which may be carried back from 1946 to 1944, under provision of Sec. 122 of the Revenue Act of 1945. The application of the unused excess profits credit adjustment against the 1944 excess profits net income results in the reduction of income subject to excess profits tax and the overpayment of excess profits tax for 1944 in the amount of \$30,865.50 (see attached).

/s/

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund

Calendar Year 1944

Computation of tax—1944

Declared value excess profits tax:

Computation as shown by RAR:

Net income for declared value excess
profits tax computation\$ 89,106.26

Less: 10% of \$750,000.00 value of
capital stock 75,000.00

Net income subject to declared value
excess profits tax\$ 14,106.26

Declared value excess profits tax 931.01

Computation as adjusted—no change 931.01

Difference

Income tax:

Computation as shown by RAR:

Net income for declared value excess
profits tax\$ 89,106.26

Add: net long-term capital gain 309.62

\$ 89,415.88

Less: Declared value excess profits
tax 931.01

Net income\$ 88,484.87

Less: Net long-term
capital gain\$ 309.62

Income subject to

excess profits

tax 42,075.25 42,384.87

Balance subject to normal

and surtax \$ 46,100.00

Normal tax \$ 10,791.00

Surtax 7,142.00

Partial tax\$ 17,933.00

25% of net long-term capital gain 77.41

Tax liability shown by RAR\$ 18,010.41

Computation as adjusted:

Net income	\$ 88,484.87	
Less: Net long-term capital gain	\$ 309.62	
Income subject to excess profits tax	5,975.25	6,284.87
Balance subject to normal and surtax		\$82,200.00
Normal tax (24%)		\$ 19,728.00
Surtax (16%)		13,152.00
Partial tax		\$ 32,880.00
25% of net long-term capital gain		77.41
		<u>\$32,957.41</u>

Deficiency in normal and surtax by reason of unused excess profits credit carry-back from 1946	\$ 14,947.00
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Excess Profits Tax:

Computation as shown by RAR:

Excess profits net income	\$ 88,175.25	
Less: Specific exemption..	\$10,000.00	
Excess profits credit.....	36,100.00	
Unused excess profits credit adjustment	—	46,100.00
Adjusted excess profits net income..	\$42,075.25	
95% of adjusted excess profits net income		\$ 39,971.49
Less: Sec. 784 credit		3,997.15
Tax liability shown by RAR		<u>\$ 35,974.34</u>

Computation as adjusted:

Excess profits net income	\$ 88,175.25	
Less: Specific exemption..	\$10,000.00	
Excess profits credit....	36,100.00	
Unused excess profits credit adjustment (carry-back from 1946)	36,100.00	82,200.00
Adjusted excess profits net income	\$ 5,975.25	
95% of adjusted excess profits net income		\$ 5,676.49
Less: Sec. 784 credit		567.65
Tax liability as adjusted		<u>\$ 5,108.84</u>

Overassessment claimed by reason of unused excess profits credit carry-back from 1946	\$ 30,865.50
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Unused Excess Profits Credit

1945	Normal tax net income disclosed by return.....	\$37,811.93
	Less: Net operating loss deduction resulting from a net operating loss carry-back from 1948 (see schedule supra)	37,811.93
	Normal tax net income as adjusted	—
	Excess profits credit determined by the income credit method (as accepted by RAR dated January 22, 1948, for the year 1944-1945)....	\$36,100.00
	Excess profits net income—1946	—
	Unused excess profits credit carry-back to 1944..	\$36,100.00
1944	Net income—1944—as disclosed by RAR.....	\$88,484.87
	Less: excess of net long-term capital gain.....	309.62
		\$88,175.25
	Less: Income subject to excess profits tax as adjusted	5,975.25
	Balance subject to normal and surtax, as ad- justed	\$82,200.00
	Excess profits net income 1944 as disclosed by RAR	\$88,175.25
	Less: Specific exemption	\$10,000.00
	Unused excess profits credit (1946 carry-back)	36,100.00
	Excess profits credit, RAR	36,100.00
	Adjusted excess profits net income as adjusted..	\$ 5,975.25

State of Oregon,

County of Multnomah—ss.

I, Clayton R. Jones, being first duly sworn, depose and say that I am President of W. J. Jones & Son, Inc., plaintiff in the above-entitled action; and that the foregoing complaint is true as I verily believe.

/s/ CLAYTON R. JONES.

Subscribed and sworn to before me this 27th day of September, A.D. 1950.

[Seal]: /s/ WILLIAM H. KINSEY,
Notary Public for the State
of Oregon.

My Commission expires 12/21/52.

A True Copy.

[Endorsed]: Filed Sept. 27, 1950.

[Title of District Court and Cause.]

ANSWER

Defendant answers as follows:

I.

Admits the allegations contained in Paragraph I of the Complaint.

II.

Admits the allegations contained in Paragraph II of the Complaint.

III.

Denies all the allegations contained in Paragraph III of the Complaint except admits that on or about March 15, 1949, plaintiff filed its Income Tax Return for the Calendar Year 1948 in which there was disclosed an alleged operating loss in the amount of \$138,379.48.

IV.

Denies all of the allegations contained in Paragraph IV of the Complaint except admits that the

returned 1946 income taxes, in the alleged amount, were paid in installments on or about the dates alleged.

V.

Denies all of the allegations contained in Paragraph V of the Complaint except admits that the returned 1944 excess profits taxes were paid in installments on or about the dates alleged.

VI.

Denies all of the allegations contained in Paragraph VI of the Complaint except admits that plaintiff filed with the Collector of Internal Revenue for the District of Oregon on November 4, 1949, an instrument in writing purporting to be a claim for refund for the calendar year 1946, in the amount of \$12,190.32, and on the same date filed with the Collector of Internal Revenue for the District of Oregon, an instrument in writing purporting to be a claim for refund for the calendar year 1944, in the amount of \$30,865.50, and admits that Exhibits "A" and "B" to the complaint are true copies of the purported claims for refund.

VII.

Denies all of the allegations contained in Paragraph VII of the Complaint.

VIII.

Defendant specifically denies that plaintiff is entitled to a bad debt deduction in the amount alleged, or in any other amount. Further answering the

allegations of Paragraph VIII of the Complaint, defendant avers that it is without knowledge or information sufficient to form a belief as to the truth of any of the remaining allegations contained in that paragraph.

IX.

Denies all of the allegations contained in Paragraph IX of the Complaint.

X.

Denies all of the allegations contained in Paragraph X of the Complaint.

XI.

Admits the allegations contained in Paragraph XI of the Complaint.

Wherefore, having fully answered, defendant prays judgment and costs.

HENRY L. HESS,

United States Attorney for
the District of Oregon;

/s/ DONALD W. McEWEN,

Assistant United States
Attorney.

United States of America,
District of Oregon—ss.

I, Donald W. McEwen, hereby certify that I have made service of the foregoing Answer on the plaintiff herein by depositing a duly certified copy thereof in the U. S. Post Office at Portland, Oregon,

on November 24, 1950, said copy being enclosed in an envelope with postage thereon prepaid addressed to Messrs. Wilbur, Beckett, Oppenheimer, Mautz & Souther; William H. Kinsey, Attorneys at Law, 1001 Board of Trade Bldg., Portland 4, Oregon, attorneys of record for plaintiff herein.

/s/ DONALD W. McEWEN,
Of Attorneys for Defendant.

[Endorsed]: Filed Nov. 24, 1950.

[Title of District Court and Causes.]

Civil Nos. 5758 and 5759

PRE-TRIAL ORDER

Introductory Statements

On the 9th day of April, 1951, a pre-trial conference was held in open court, the Honorable Gus J. Solomon of this court presiding. The plaintiff in each of the above-entitled actions appeared by its attorneys, Eugene K. Oppenheimer and William H. Kinsey (Wilbur, Beckett, Oppenheimer, Mautz & Souther), and the defendant in each of the above-entitled actions was represented and appeared by Thomas R. Winter, a special assistant to the chief counsel of the Bureau of Internal Revenue.

The two above-entitled actions involve the same controversy and have been divided into two complaints by plaintiff only for pleading and jurisdiction purposes. The two actions will be consolidated

for trial and are herein considered as one action against the defendants collectively.

This is an action to recover excess profits taxes paid by plaintiff for the year 1944 and income taxes paid by plaintiff for the years 1946 and 1947. While the action technically involves the years 1944, 1946 and 1947, the real basis of the controversy is an alleged 1948 bad debt deduction in the sum of \$134,555.21 claimed by plaintiff as the major portion of an alleged net operating loss disclosed on its 1948 income tax return. Defendants have denied the said 1948 bad debt deduction and the resulting portion of the 1948 net operating loss. If such 1948 bad debt deduction is allowable as claimed by plaintiff, it increases plaintiff's 1948 net operating loss by the amount of said deuction, and such net operating loss may be carried back and reflected in the years 1944, 1946 and 1947, entitling plaintiff to an excess profits tax refund for 1944 and income tax refunds for 1946 and 1947. Plaintiff's claimed bad debt deduction in the sum of \$134,555.21 is based upon the claimed worthlessness of certain notes held by plaintiff which were issued by Mina del Refugio, S. A., a Mexican corporation.

Statement of Facts Admitted Upon the
Pleadings and at Pre-Trial

I.

At all times herein concerned plaintiff has been and now is a corporation duly organized and existing under the laws of the State of Oregon, maintaining its principal office in Portland, Oregon.

II.

The taxes for which refund is sought in Civil No. 5759 (against the United States) were collected by J. W. Maloney, who at all times herein concerned prior to September 1, 1947, was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon, and was not in office as Collector of Internal Revenue for the District of Oregon when this action was commenced and has not been in such office since September 1, 1947. The taxes for which refund is sought in Civil No. 5758 (against the Collector) were collected by Hugh H. Earle, who at all times herein concerned on and subsequent to September 1, 1947, was, and now is, the duly appointed and acting Collector of Internal Revenue for the District of Oregon.

III.

Jurisdiction of this Court over Civil No. 5758 (against the Collector) exists by virtue of 28 U.S.C. Sec. 1340, and jurisdiction of this Court over Civil No. 5759 (against the United States) exists by virtue of 28 U.S.C. Sec. 1346.

IV.

On or about March 15, 1949, plaintiff filed its income tax return for the calendar year 1948 (Pre-Trial Exhibit No. 1), in which there was disclosed an alleged bad debt deduction of \$134,555.21, constituting part of an alleged operating loss in the amount of \$138,379.48.

V.

On or about May 16, 1947, plaintiff filed its completed income tax return for 1946 (Pre-Trial Exhibit No. 2), disclosing an income tax liability of \$12,190.32, which sum plaintiff duly paid in installments during 1947.

VI.

On or about May 17, 1948, plaintiff filed its completed income tax return for the year 1947 (Pre-Trial Exhibit No. 3), disclosing an income tax liability of \$154,791.75, which sum plaintiff duly paid in installments during the year 1948.

VII.

On or about April 20, 1945, plaintiff duly filed its completed income tax return (Pre-Trial Exhibit No. 4) and excess profits tax return (Pre-Trial Exhibit No. 5) for the year 1944, disclosing an income tax liability of \$19,677.81 and an excess profits tax liability of \$49,871.47, which taxes plaintiff duly paid in installments during the year 1945.

VIII.

On November 4, 1949, plaintiff timely filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the calendar year 1946 (Pre-Trial Exhibit 6) in which plaintiff claims a refund of \$12,190.32, being all of the income tax paid by plaintiff for the calendar year 1946. Substantially all of such refund for 1946 claimed by plaintiff results from an alleged net operating loss deduction attributable to the carry-

back of the alleged net operating loss claimed in 1948.

IX.

On November 4, 1949, plaintiff timely filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the year 1947 (Pre-Trial Exhibit 7), in which plaintiff claims a refund of \$38,030.29 of the income taxes paid by plaintiff for the calendar year 1947. All of such refund for 1947 claimed by plaintiff results from an alleged net operating loss deduction attributable to the carry-back to 1946 of the alleged net operating loss claimed in 1948 and the carry-forward from 1946 to 1947 of the amount of the alleged net operating loss deduction not absorbed by 1946 net income.

X.

On November 4, 1949, plaintiff timely filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the year 1944 (Pre-Trial Exhibit 8), in which plaintiff claims a refund of excess profits taxes in the sum of \$30,865.50. Said refund is based on an alleged unused excess profits credit carried back from 1946 to 1944, which 1946 excess profits credit results from the elimination of plaintiff's 1946 income by the alleged 1946 net operating loss deduction attributable to the carry-back of the alleged net operating loss claimed in 1948. Said refund claim indicates that the claimed excess profits tax refund results in an income tax deficiency of \$14,947.00 and that the difference between the claimed excess profits tax

refund and the resulting income tax deficiency is \$15,918.50.

XI.

Plaintiff has not received by registered mail from defendants, or either of them, or from the Commissioner of Internal Revenue, any notice of allowance or disallowance of said refund claims for 1944, 1946 and 1947, and more than six months have elapsed since the filing of said refund claims by plaintiff.

XII.

At all times herein concerned Mina del Refugio, S.A., was a corporation duly organized and existing under the laws of Mexico.

XIII.

As of December 31, 1948, plaintiff charged off on its books the sum of \$134,555.21 by: (a) debiting "bad debts" in the amount of \$143,330.21, and (B) crediting "notes receivable" in the amount of \$121,763.74, (c) crediting "interest" in the sum of \$21,566.47, and (d) setting up on its books \$8,655.00 as the estimated amount of recovery on alleged notes of Mina del Refugio, S.A.

Plaintiff's Statement of Facts

Denied by Defendants

Set forth below is plaintiff's statement of facts giving rise to, and forming the basis for, the claimed 1948 bad debt deduction in the sum of \$134,555.21. Defendants deny the facts herein stated.

I.

During the year 1948 plaintiff was the holder and owner of 32 promissory notes in the aggregate principal amount of \$121,763.74 duly issued by Mina del Refugio, S.A., a Mexican corporation (hereinafter called the "Mexican corporation") which notes are dated on various dates commencing November 30, 1944, and ending December 30, 1946, payable two years after the date of issue together with interest at the rate of 6 per cent per annum from the dates of the notes or from a prior date specified in the notes. On or about August 31, 1946, plaintiff received 28 of said 32 notes in the aggregate principal amount of \$102,930.96 by endorsement without recourse from Clayton R. Jones, and plaintiff paid value for said 28 notes by crediting the account of Clayton R. Jones in the sum of \$102,930.96, the face amount of said notes, and the sum of \$4,654.57 as interest accrued on said notes to August 31, 1946, making a total credit of \$107,585.53 to the account of Clayton R. Jones. The other 4 notes in the aggregate face amount of \$18,832.78 were received by plaintiff on December 31, 1946, by endorsement without recourse from Clayton R. Jones, and plaintiff paid value from said notes by crediting the account of Clayton R. Jones in the sum of \$18,832.78, the face amount of said 4 notes. The aggregate sum in which plaintiff credited the account of Clayton R. Jones in payment for said 32 notes was \$126,418.31, being the \$102,930.96 principal amount of the 28 notes received on August 31, 1946, \$4,654.57 accrued interest

on said notes to August 31, 1946, plus \$18,832.78 principal amount of the four notes received by plaintiff on December 31, 1946. Such credits made by plaintiff to the account of Clayton R. Jones cancelled and paid \$126,418.31 of a debt owed by Clayton R. Jones to plaintiff for cash advances made by plaintiff to or on behalf of Clayton R. Jones.

II.

After receipt of said notes from Clayton R. Jones, plaintiff accrued interest on said notes in the sum of \$2,300.22 for 1946, \$7,305.84 for 1947, and \$7,305.84 for 1948, making total accrued interest of \$16,911.90. Such accrued interest was reflected in plaintiff's net income for federal income tax purposes for the subject years. Such \$16,911.90 in accrued interest, plus the \$126,418.31 with which plaintiff credited the account of Clayton R. Jones in payment for said notes, made a total of \$143,330.21 which plaintiff paid or accrued for said 32 notes.

III.

The Board of Directors of the Mexican corporation, debtor on said 32 notes, held a meeting on December 27, 1948, at which the Board ratified the termination of all operations of the Mexican corporation and confirmed the sale of all equipment of the corporation pursuant to a contract previously entered into, and further directed the immediate abandonment of all real property, mining claims and all other assets of the corporation, including the corporate structure, and at said meeting the

directors determined that not more than \$22,500.00 could be salvaged from the corporation, and directed that any amount so realized should be distributed pro rata to the holders of the outstanding notes of the corporation.

IV.

Said 32 notes owned by plaintiff constituted 39 per cent of the notes of the Mexican corporation outstanding in the total sum of \$308,378.39, so that a pro rata distribution of said \$22,500.00 entitled plaintiff to payment of an amount not in excess of \$8,775.00 (39% of \$22,500.00) upon its notes. Said notes were partially worthless if not wholly worthless in 1948 to the extent of \$134,555.21, being the difference between \$143,330.21 (the amount paid and accrued by plaintiff for the notes) and \$8,775.00 (the maximum pro rata distribution to which plaintiff was entitled on said notes). Plaintiff was justified in charging off said notes in 1948 in the sum of \$134,555.21 and the amount actually received by plaintiff on said notes subsequent to such charge-off was \$8,694.42, which is \$80.58 less than the \$8,775.00 set up by plaintiff on its books as the estimated recovery when the notes were charged off on December 31, 1948.

Contentions of Plaintiff

That plaintiff is entitled to its claimed 1948 bad debt deduction of \$134,555.21 (and resulting net operating loss) attributable to ownership of certain notes of Mina del Refugio, S.A., a Mexican corporation, because:

(1) The notes of said Mexican corporation owned and charged off by plaintiff in 1948 were debt obligations within the meaning of I.R.C. Sec. 23 (k).

(2) Plaintiff paid and accrued the aggregate sum of \$143,330.21 for said notes.

(3) Said notes became worthless in 1948 to the extent of \$134,555.21, said sum being the \$143,330.21 paid or accrued by plaintiff for the notes less the \$8,775.00 maximum recovery to which plaintiff was entitled on the notes after termination of the debtor's activities in 1948. If said notes were not worthless to the extent of \$134,555.21 in 1948, they were recoverable only in part within the meaning of the provision of Section 23 (k) (1), which reads: " * * * when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction," and plaintiff charged off said notes in 1948 in the amount of \$134,555.21.

Contentions of Defendants

That the Commissioner of Internal Revenue did not err in denying the plaintiff's claimed bad debt deduction of \$134,555.21 attributable to ownership of certain notes of the Mina del Refugio, a Mexican mining corporation, because

1. The plaintiff's investment in Mina del Refugio was not in truth and in fact loans, the loss

on which would be deductible under Section 23 (k) of the Internal Revenue Code as "a debt recoverable only in part,"

2. The advancements were properly considered by the Commissioner as contributions of capital and not debts within the meaning of Section 23 (k), and

3. The burden is upon the plaintiff to prove that the loss, if any, on its investment in Mina del Refugio was sustained in 1948.

Issue to Be Decided

Whether the sum of \$134,555.21 of the claimed net operating loss of \$138,379.48 reported by plaintiff in its 1948 income tax return was a bad debt allowable as a deduction for 1948 under Section 23 (k) of the Internal Revenue Code.

Plaintiff contends and defendants concede that if the said \$134,555.21 is allowable as a bad debt deduction for 1948 under I.R.C. Section 23 (k), then plaintiff is entitled to its claimed net operating loss for 1948 and to refunds for 1944, 1946 and 1947, which refunds result from (i) the carry-back of such net operating loss to 1946 and 1947 under Section 122 of the Internal Revenue Code, and (ii) the unused excess profits credit created by the carry-back of such net operating loss to 1946 which excess profits credit may be carried back to 1944 under the provisions of I.R.C. Section 710 (c) as amended by Section 122 (c) of the Revenue Act of 1945. Defendants do not admit that such carry-backs and unused excess profits credit generates the exact

amount of the refunds claimed by plaintiff, as there may be certain minor adjustments. If this court decides the above issue in favor of plaintiff the parties will be able to compute the amount of the refunds to which plaintiff is entitled for 1944, 1946 and 1947.

Exhibits

The following exhibits were introduced by plaintiff at the pre-trial conference and were marked for identification and it was stipulated that further identification or authentication be waived, irrespective of whether said exhibits are originals, copies or translations, each party reserving, however, the right to object to the admissibility of said exhibits on the ground of relevancy and materiality only:

1. Plaintiff's Income Tax Return for the calendar year 1948.
2. Plaintiff's Income Tax Return for the calendar year 1946.
3. Plaintiff's Income Tax Return for the calendar year 1947.
4. Plaintiff's Income Tax Return for the calendar year 1944.
5. Plaintiff's Excess Profits Tax Return for the calendar year 1944.
6. Plaintiff's 1946 Refund Claim.
7. Plaintiff's 1947 Refund Claim.
8. Plaintiff's 1944 Refund Claim.
9. Revenue Agent's report on examination of plaintiff's 1946 refund claim and on examination of 1948 bad debt deduction.

10. Revenue Agent's report on examination of plaintiff's 1947 refund claim.

11. Revenue Agent's report on examination of plaintiff's 1944 refund claim.

12. Revised statement on Revenue Agent's report covering examination of 1946 return of Clayton R. Jones.

13 through 44. 32 promissory notes of Mina del Refugio, S.A., payable to Clayton R. Jones, dated various dates from November 30, 1944, to December 30, 1946, aggregating \$121,763.74. (The individual notes have been separately numbered 13 to 44, inclusive.)

45. Articles of Incorporation and Bylaws of Mina del Refugio, S.A., in Spanish, certified by the consul of the United States at Nogales, Sonora, Mexico.

46. Certified translation of the Articles of Incorporation and Bylaws identified in Exhibit 45.

47. Original minute book of Mina del Refugio, S.A., in longhand and in Spanish.

48. Translation of the minute book identified in Exhibit 47.

49. Stock book of Mina del Refugio, S.A.

50. Book of Mina del Refugio, S.A., containing record of cash received, check record and journal entries.

51. General ledger of Mina del Refugio, S.A.

52. Letter dated June 30, 1944, from D. D. Kroder to Clayton R. Jones.

53. Mining option agreement dated July 31,

1944, between Clayton R. Jones, John C. Higgins and Daniel Kroder.

54. Supplemental agreement dated August 31, 1944, between Kroder, Jones and Higgins, and related letter from Higgins to Kroder dated August 31, 1944.

55. Trust agreement dated September 1, 1944, between Clayton R. Jones, John C. Higgins and D. E. Harris with attached letter from Juan F. Robinson to D. E. Harris dated August 10, 1944.

56. Translation of option and lease agreement dated October 31, 1944, from Jorge F. Robinson, Juan F. Robinson and Ana Robinson to Mina del Refugio, S.A.

57. Agreement dated November 20, 1944, between Clayton R. Jones, D. E. Harris and John C. Higgins.

58. Copy of the minutes of the meeting of the Board of Directors of Mina del Refugio, S.A., dated November 20, 1944.

59. Agreement dated March, 1945, between Clayton R. Jones, John C. Higgins and D. E. Harris.

60. Letter dated April 17, 1945, from Walter M. Wells to Clayton Jones.

61. Letter dated July 29, 1945, from A. J. Klamt to Higgins and Jones.

62. Letter dated March 21, 1946, from John C. Higgins to Malcolm C. Little.

63. Letter dated March 25, 1946, from John C. Higgins to Arthur E. Johnson.

64. Letter dated May 16, 1946, from Clayton R. Jones to Walter Wells.

65. Journal entry sheet of plaintiff for August 31, 1946.

66. Journal entry sheet of plaintiff for December 31, 1946.

67. Account sheet of Clayton R. Jones with plaintiff for 1946.

68. Letter dated April 4, 1947, from Clayton R. Jones to Walter M. Wells.

69. Letter dated August 4, 1947, from John C. Higgins to Juan F. Robinson.

70. Letter dated January 15, 1948, from A. J. Klamt to John C. Higgins.

71. Letter dated March 9, 1948, from Clayton R. Jones to Walter M. Wells.

72. Letter dated April 1, 1948, from A. J. Klamt to Mina del Refugio, Portland, Oregon.

73. Letter dated April 8, 1948, from Clayton R. Jones to A. J. Klamt.

74. Telegram dated November 15, 1948, from Clayton R. Jones to A. J. Klamt.

75. Two letters dated December 27, 1948, from John C. Higgins to A. J. Klamt.

76. Copy of minutes of meeting of the Board of Directors of Mina del Refugio, S.A., held on December 27, 1948.

77. Statement dated December 27, 1948, signed by A. J. Klamt.

78. Journal entry sheets of plaintiff for December 31, 1948.

79. Various journal entry sheets and account sheets of plaintiff showing accrual of interest on Mina del Refugio, S.A., notes.

80. Internal Revenue Agent in charge, etc.

[In margin: To W. J. Jones & Son, Inc., enclosing copy of Revenue Agent's Report of January 27, 1950, for the years 1946 and 1948.]

It is agreed by the parties that this pre-trial order will govern the course of the trial and will not be amended, except by consent, or to prevent manifest injustice.

The court finding that the foregoing clearly and accurately reflects the pre-trial conference and the stipulations and agreements of the parties, hereby ratifies and confirms the foregoing proceedings, and does hereby

Order that the said pre-trial order be and the same is hereby incorporated into and hereby made a part of the record in this case for the purpose of controlling the course of proceedings on the formal trial hereof before the Court.

Dated this 7th day of May, 1951.

/s/ GUS J. SOLOMON,
Judge.

Approved:

/s/ WILLIAM H. KINSEY,
Of Attorneys for Plaintiff.

/s/ THOMAS R. WINTER,
Of Attorneys for Defendant.

[Endorsed]: Filed May 7, 1951.

In the United States District Court
for the District of Oregon

Civil No. 5758

W. J. JONES & SON, INC.,

Plaintiff,

vs.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,

Defendant.

Civil No. 5759

W. J. JONES & SON, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The above-entitled cases were consolidated by consent of the parties and approval of the Court, and came on regularly for trial without a jury before the Honorable Claude C. McColloch, Judge of the above-entitled Court, on May 15 and 16, 1951.

Plaintiff appeared by its president, Clayton R. Jones, and its attorneys, Eugene K. Oppenheimer and William H. Kinsey (Wilbur, Oppenheimer, Mautz & Souther), and defendants were represented and appeared by Andrew F. Oehmann, Special Assistant to the Attorney General, and Donald W.

McEwen, Assistant United States Attorney for the District of Oregon.

Following opening statements of counsel, the evidence of plaintiff and defendants was presented. After both parties rested, arguments of counsel were heard and the Court took the matters under advisement. Thereafter the Court, being fully advised, announced judgment for the plaintiff in each of the above-entitled cases, and in accordance therewith the Court hereby makes the following findings of fact and conclusions of law, and the exhibits referred to in the findings are by such reference made a part thereof as though fully set forth therein:

Findings of Fact

I.

At all times herein concerned plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, maintaining its principal office in Portland, Oregon.

II.

The taxes for which refund is sought in Civil No. 5759 (against the United States) were collected by J. W. Maloney, who prior to September 1, 1947, was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon, and was not in office as Collector of Internal Revenue for the District of Oregon when said action was commenced and has not been in such office since September 1, 1947. The taxes for which refund is

sought in Civil No. 5758 (against the Collector) were collected by Hugh H. Earle, who subsequent to September 1, 1947, was, and now is, the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon.

III.

Jurisdiction of this Court over Civil No. 5758 (against the Collector) exists by virtue of 28 U.S.C. Sec. 1340, and jurisdiction of this Court over Civil No. 5759 (against the United States) exists by virtue of 28 U.S.C. Sec. 1346.

IV.

On or about March 15, 1949, plaintiff duly filed its income tax return for the calendar year 1948 (Exhibit No. 1) wherein plaintiff properly claimed a bad debt deduction of \$134,555.21 which constituted part of an operating loss for 1948 in the amount of \$138,379.48.

V.

On or about May 16, 1947, plaintiff duly filed its completed income tax return for 1946 (Exhibit No. 2), which properly disclosed an income tax liability of \$12,190.32, and plaintiff duly paid said tax in installments during 1947.

VI.

On or about May 17, 1948, plaintiff duly filed its completed income tax return for the year 1947 (Exhibit No. 3), which properly disclosed an income tax liability of \$154,791.75, and plaintiff duly paid said tax in installments during the year 1948.

VII.

On or about April 20, 1945, plaintiff duly filed its completed income tax return (Exhibit No. 4) and excess profits tax return (Exhibit No. 5) for the year 1944, which properly disclosed an income tax liability of \$19,677.81 and an excess profits tax liability of \$49,871.47, and plaintiff duly paid said taxes in installments during the year 1945.

VIII.

On November 4, 1949, plaintiff duly filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the calendar year 1946 (Exhibit No. 6), in which plaintiff properly claimed a refund of \$12,190.32, resulting primarily from a net operating loss deduction attributable to the carry-back to 1946 of the \$138,379.48 net operating loss sustained in 1948.

IX.

On November 4, 1949, plaintiff duly filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the year 1947 (Exhibit No. 7), in which plaintiff properly claimed a refund of \$38,030.29 resulting from a net operating loss deduction attributable to the carry-back to 1946 of the \$138,379.48 net operating loss sustained in 1948 and the carry-forward from 1946 to 1947 of the amount of such net operating loss deduction not absorbed by 1946 net income.

X.

On November 4, 1949, plaintiff duly filed with the Collector of Internal Revenue for the District of Oregon a refund claim on Form 843 for the year 1944 (Exhibit No. 8), in which plaintiff properly claimed a refund of excess profits taxes in the sum of \$30,865.50 resulting from an unused excess profits credit carried back from 1946 to 1944, due to the elimination of plaintiff's 1946 income by the 1946 net operating loss deductions attributable to the carry-back of the \$138,379.48 net operating loss sustained in 1948. Said refund claim disclosed that said unused excess profits credit carry-back results in an income tax deficiency of \$14,947.00.

XI.

Plaintiff did not receive by registered mail any notice of allowance or disallowance of said refund claim for 1944, 1946 and 1947, and the within actions were not commenced until more than six months had elapsed after the aforementioned filing of said refund claims by plaintiff.

XII.

At all times herein concerned Mina del Refugio, S.A., was a corporation duly organized and existing under and by virtue of the laws of Mexico. Said corporation is hereinafter referred to as the "Mexican Corporation."

XIII.

Plaintiff's accounting period is the calendar year and plaintiff keeps its books on the accrual basis.

XIV.

During the year 1948 plaintiff was the unqualified holder and owner of 32 promissory notes in the aggregate principal amount of \$121,763.74 (Exhibits 13 through 44), duly issued by the Mexican Corporation.

XV.

Defendants admit and the Court finds that said 32 notes were acquired by plaintiff for a valuable consideration.

XVI.

On or about August 31, 1946, plaintiff received 28 of said 32 notes from Clayton R. Jones for a valuable consideration equal to their aggregate principal amount of \$102,930.96, plus \$4,654.57 accrued interest thereon to August 31, 1946. The remaining 4 notes of said 32 notes were received by plaintiff from Clayton R. Jones on December 31, 1946, for a valuable consideration equal to their aggregate principal amount of \$18,832.78, making a total consideration of \$126,418.31 paid by plaintiff for said 32 notes.

XVII.

When said 32 notes were received by plaintiff on August 31, 1946, and December 31, 1946, for the aggregate consideration of \$126,418.31, said notes were reasonably worth such consideration paid for same, and plaintiff and the officers of the Mexican Corporation fully expected that said notes and interest would be fully paid.

XVIII.

After receipt of said notes from Clayton R. Jones, plaintiff accrued interest on said notes in the sum of \$2,300.22 for 1946, \$7,305.84 for 1947, and \$7,305.84 for 1948, making total accrued interest of \$16,911.90. Such accrued interest was reflected in plaintiff's net income for federal income tax purposes for the subject years. Said \$16,911.90 is accrued interest, plus the aforementioned aggregate consideration of \$126,418.31, made a total of \$143,330.21 which plaintiff paid or accrued for said 32 notes.

XIX.

The Board of Directors of the Mexican Corporation duly held a meeting on December 27, 1948, at which the board ratified the termination of all operations of the Mexican Corporation, confirmed the sale of all its equipment and further directed the immediate abandonment of all real property, mining claims and other assets. At said meeting the directors determined that not more than \$22,500.00 could be salvaged from all of the corporate assets.

XX.

Said 32 notes were worthless in 1948 to the extent of \$134,555.21, said amount being the difference between \$143,330.21 (the consideration paid and accrued by plaintiff for said notes) and \$8,775.00 (the maximum amount which plaintiff could expect to recover on said notes); and on December 31, 1948, plaintiff properly charged said notes off on its books in the sum of \$134,555.21 by (a) debiting

“bad debts” in the amount of \$143,330.21, (b) crediting “notes receivable” in the amount of \$121,763.74, (c) crediting “interest” in the sum of \$21,566.47, and (d) setting up on its books \$8,775.00 as the estimated amount of recovery on said notes. The amount actually received by plaintiff on said notes subsequent to such charge-off was \$8,694.42, which is \$80.58 less than \$8,775.00 estimated recovery.

XXI.

Said 32 notes charged off by plaintiff in 1948 were not worthless prior to 1948.

XXII.

At no time during 1948 nor at any other time did plaintiff own any capital stock or any other equity interest in the Mexican Corporation.

XXIII.

Clayton R. Jones made loans to the Mexican Corporation evidenced by notes duly issued for a valuable consideration, and 32 of the notes so issued to Clayton R. Jones were the 32 notes assigned by him to plaintiff for value on August 31, 1946, and December 31, 1946.

XXIV.

In addition to the loans to the Mexican Corporation made by Clayton R. Jones, loans were made by John C. Higgins and D. E. Harris, which loans were also evidenced by notes duly issued by the Mexican Corporation for a valuable consideration.

XXV.

Advances in the aggregate sum of \$308,378.39 were made by Clayton R. Jones, John C. Higgins and D. E. Harris, which advances were evidenced by notes duly made, executed and delivered by the Mexican Corporation (including the 32 notes assigned by Clayton R. Jones to plaintiff for value). At the time of making such advances Jones, Higgins and Harris intended that the advances should constitute loans and create a debtor-creditor relationship, and all subsequent actions of Jones, Higgins and Harris in regard to said advances (and the notes evidencing same) have been consistent with such intention that said advances constituted loans and created a debtor-creditor relationship.

XXVI.

Jones, Higgins and Harris acquired the Mexican Corporation for the purpose of exploiting certain gold and silver mining rights having a substantial value obtained by Jones, Higgins and Harris as individuals from two finders named Daniel D. Kroder and Arthur E. Johnson.

XXVII.

Pursuant to an agreement dated July 31, 1944 (Exhibit 53), Kroder was to receive one-third stock interest in the Mexican Corporation as a finder's fee for procuring such mining rights for Jones, Higgins and Harris, which interest was later reduced to a 20 per cent stock interest to Kroder and his associate Johnson (10% to each) under a sup-

plemental agreement of August 31, 1944 (Exhibit 54). Kroder and Johnson never made any advances or contributions to the Mexican Corporation. The 80 per cent balance of the capital stock of the Mexican Corporation was owned by Jones, Higgins and Harris.

XXVIII.

The mining rights acquired by Jones, Higgins and Harris from Kroder and Johnson were transferred by Jones, Higgins and Harris to the Mexican Corporation through the execution of an option and lease agreement dated October 31, 1944, in the name of the Mexican Corporation (Exhibit 56). Said mining rights at the time of such transfer to the Mexican Corporation had a very substantial value in excess of the amount payable under said option and lease agreement, and such transfer of said mining rights to the Mexican Corporation by Jones, Higgins and Harris constituted contributions to the capital of the Mexican Corporation.

XXIX.

In the spring of 1945 a third person, Walter M. Wells, and his associates paid \$5,000 for the 10 per cent stock interest of Kroder in the Mexican Corporation, and in March, 1946, Jones and Higgins paid \$4,000 for the 9 per cent stock interest of Johnson in the Mexican Corporation (Johnson previously having transferred a one per cent interest to an associate of Wells). The asset accounting for such value of the stock was the excess in the

value of said mining rights over the amounts payable under the option and lease agreement.

XXX.

Whether or not the transfer of said mining rights by Jones, Higgins and Harris to the Mexican Corporation constituted contributions to capital, the advances made by Jones, Higgins and Harris to the Mexican Corporation evidenced by the notes duly issued by the Mexican Corporation (including the 32 notes in question) were intended to constitute, and did constitute, loans rather than contributions to capital.

XXXI.

The advances to the Mexican Corporation were not made by the stockholders thereof in direct proportion to their stock ownership because Kroder and Johnson owned 20 per cent of the capital stock but made no advances whatsoever to the corporation.

XXXII.

There were business reasons why Jones, Higgins and Harris intended that their advances to the Mexican Corporation should constitute loans, in that they desired to be repaid such advances before anything was received by or accrued to the finders (Kroder and Johnson), who paid nothing for their 20 per cent stock interest, and they desired to be in as strong a position as possible in the event that the Mexican authorities or general creditors made claims against the corporation.

XXXIII.

At the time of the execution of the agreements under which the loans were made to the Mexican Corporation (Exhibits 53, 57 and 59), Jones, Higgins and Harris expected that the advances required by the corporation would not exceed \$50,000, and had no idea that the advances would exceed \$300,000. They believed that the loans would be repaid prior to the maturity dates of the notes issued for such loans and based on their investigations, available engineering reports and blocked-out ore deposits, such belief was reasonable. The liabilities evidenced by the notes of the Mexican Corporation were agreed to be incurred by Jones, Higgins and Harris in the expectancy that the Mexican Corporation would be successful and pay off the obligations.

XXXIV.

The loans evidenced by the 32 notes charged off by plaintiff in 1948 were consistently treated as loans and debt obligations on the books of plaintiff and on the books of the Mexican Corporation.

Conclusions of Law

I.

The Court has jurisdiction of the parties and the subject matter.

II.

That \$134,555.21 of the \$138,379.48 net operating loss sustained by plaintiff for its taxable year 1948 was a bad debt allowable as a deduction for 1948 under Section 23 (k) of the Internal Revenue Code,

and such \$138,379.48 net operating loss entitled plaintiff to the refunds claimed by it for 1944, 1946 and 1947.

III.

Said 1948 bad debt deduction of \$134,555.21 resulted from the worthlessness of 32 notes of the Mexican Corporation owned by plaintiff in 1948, which notes constituted debt obligations within the meaning of I.R.C. Section 23 (k), and said notes had an adjusted basis to plaintiff of \$143,330.21. Said 32 notes became worthless in 1948 to the extent of at least \$134,555.21, and plaintiff properly charged said notes off on its books in 1948 in the amount of \$134,555.21.

IV.

Plaintiff is entitled to recognition for tax purposes as a separate entity distinct from Clayton R. Jones, who assigned the 32 notes in question to plaintiff for a valuable consideration. Said 32 notes in the hands of plaintiff constituted debt obligations and did not represent contributions to capital, because: (i) said notes were in the form of debt obligations, (ii) said notes were received by plaintiff as debt obligations for value, (iii) said notes were consistently treated by plaintiff as debt obligations, and (iv) plaintiff did not have or own any interest in the capital stock of the Mexican Corporation, and the stock ownership of Clayton R. Jones in the Mexican Corporation, or his activities in regard thereto, are not attributable to plaintiff.

V.

To determine whether advances in any particular instance should be regarded for tax purposes as constituting debts or contributions to capital it is necessary to consider all the circumstances, including the intent of the parties at the time the transactions in question were entered into, and if the stock ownership of Clayton R. Jones in the Mexican Corporation, or his activities in regard thereto, are attributable to plaintiff, then findings of fact XXIII through XXXIV support the Court's conclusion that \$134,555.21 of plaintiff's \$138,379.48 net operating loss for 1948 was a bad debt allowable as a deduction for 1948 under I.R.C. Section 23 (k).

VI.

The taxes for which refund is herein sought were excessive, and were illegally and wrongfully withheld from plaintiff, and the Commissioner of Internal Revenue erred in failing to allow plaintiff's claims for refund.

VII.

Plaintiff in Civil No. 5758 is entitled to judgment in accordance with these findings of fact and conclusions of law in the sum of \$5,190.32 as a refund of income taxes for 1946, and in the sum of \$38,030.29 as a refund of income taxes for 1947, making a total of \$43,220.61 plus interest thereon, for which judgment shall be entered herein.

VIII.

Plaintiff in Civil No. 5759 is entitled to judgment

in accordance with these findings of fact and conclusions of law in the sum of \$7,000.00 as a refund of income taxes for 1946, and in the sum of \$30,865.50 as a refund of excess profits tax for 1944, making a total of \$37,865.50, plus interest thereon, for which judgment shall be entered herein. Any deficiency in income tax for 1944 attributable to the unused excess profits credit carry-back resulting in said excess profits tax refund of \$30,865.50 may be assessed in accordance with law (I.R.C. Sec. 276 (d) and other applicable provisions).

Judgment

Based upon the foregoing findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff in Civil No. 5758 have and recover from defendant Hugh H. Earle, Collector of Internal Revenue for the District of Oregon, the sum of \$43,220.61 (said sum constituting a \$5,190.32 income tax refund for 1946 and a \$38,030.29 income tax refund for 1947), plus interest thereon at the rate of 6 per cent per annum from November 4, 1949, as provided by law.

The Court hereby certifies that there was probable cause for the acts done by defendant Hugh H. Earle, Collector of Internal Revenue for the District of Oregon, in regard to the collection and withholding of the taxes for which judgment is herein awarded.

It Is Further Ordered, Adjudged and Decreed that plaintiff in Civil No. 5759 have and recover

from defendant, United States of America, the sum of \$37,865.50 (said sum constituting a \$7,000.00 income tax refund for 1946 and a \$30,865.50 excess profits tax refund for 1944), plus interest thereon at the rate of 6 per cent per annum from November 4, 1949, as provided by law.

Dated this 12th day of June, 1951.

/s/ CLAUDE C. McCOLLOCH,
Judge.

State of Oregon,
County of Multnomah—ss.

Due service of the foregoing Findings of Fact, Conclusions of Law and Judgment, by copy, as prescribed by law, is hereby admitted, at Portland, Oregon, this 11th day of June, 1951.

/s/ DONALD W. McEWEN,
Of Attorneys for Defendant.

[Endorsed]: Filed June 12, 1951.

[Title of District Court and Cause.]

Civil No. 5758

NOTICE OF APPEAL

To W. J. Jones & Son, Inc., plaintiff, and William H. Kinsey of the firm of Wilbur, Oppenheimer, Mautz & Souther, attorneys for the plaintiff:

Notice is hereby given that Hugh H. Earle, Collector of Internal Revenue for the District of Ore-

gon, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered in this action on the 12th day of June, 1951, in favor of plaintiff and against defendant.

Dated this 8th day of August, 1951, at Portland, Oregon.

HENRY L. HESS,
United States Attorney for
the District of Oregon.

/s/ DONALD W. McEWEN,
Assistant United States
Attorney.

[Endorsed]: Filed Aug. 8, 1951.

[Title of District Court and Cause.]

Civil No. 5759

NOTICE OF APPEAL

To W. J. Jones & Son, Inc., plaintiff, and William H. Kinsey of the firm of Wilbur, Oppenheimer, Mautz & Souther, attorneys for the plaintiff:

Notice is hereby given that United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered in this action

on the 12th day of June, 1951, in favor of plaintiff and against defendant.

Dated this 8th day of August, 1951, at Portland, Oregon.

HENRY L. HESS,
United States Attorney for
the District of Oregon.

/s/ DONALD W. McEWEN,
Assistant United States
Attorney.

[Endorsed]: Filed Aug. 8, 1951.

[Title of District Court and Causes.]

Civil No. 5758

MOTION FOR EXTENSION OF TIME

Comes now the defendant above named, by and through his attorneys, Henry L. Hess, United States Attorney for the District of Oregon, and Donald W. McEwen, Assistant United States Attorney, and moves the Court for an order extending the time for filing the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit to ninety days from the first date of filing of said Notice of Appeal. This motion is based on the grounds that the Department of Justice requires additional time to fully consider said appeal.

Dated at Portland, Oregon, this 11th day of September, 1951.

HENRY L. HESS,

United States Attorney for
the District of Oregon.

/s/ DONALD W. McEWEN,

Assistant United States
Attorney.

[Endorsed]: Filed Sept. 14, 1951.

[Identical Motion filed Sept. 14, 1951, in Civil No. 5759.]

[Title of District Court and Cause.]

Civil No. 5758

ORDER

This matter coming on to be heard *ex parte* this day upon motion of defendant, through his attorneys, Henry L. Hess, United States Attorney for the District of Oregon, and Donald W. McEwen, Assistant United States Attorney, for an order extending time for the filing of the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit, to enable the Department of Justice to have additional time to consider said appeal, and the Court being advised in the premises,

It Is Ordered that the time for filing the within

appeal and docketing the action be, and it is hereby extended to ninety days from the first date of the Notice of Appeal.

Made and entered at Portland, Oregon, this 14th day of September, 1951.

/s/ CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed Sept. 14, 1951.

[Identical Order entered and filed Sept. 14, 1951, in Civil No. 5759.]

[Title of District Court and Cause.]

Civil Nos. 5758 and 5759

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

The defendant, Hugh H. Earle, hereby designates the entire record in this case to be contained in the record on appeal, more particularly described as follows:

1. Complaint and Summons.
2. Answer.
3. Pre-Trial Order.
4. Findings of Fact and Conclusions of Law.
5. Judgment.
6. Notice of Appeal.

7. Motion for Extension of Time.
8. Order.
9. All Exhibits.
10. Transcript of Testimony and All Proceedings at Trial.
11. This Designation.

Dated this 24th day of October, 1951.

HENRY L. HESS,

United States Attorney for
the District of Oregon.

/s/ DONALD W. McEWEN,
Assistant United States
Attorney.

[Endorsed]: Filed Oct. 24, 1951.

[Title of District Court and Cause.]

Civil No. 5758

STIPULATION

It is hereby stipulated by and between the parties herein through their counsel, Donald W. McEwen, Assistant United States Attorney, representing defendant Hugh H. Earle, and William H. Kinsey, of attorneys for plaintiff, that an order may be entered authorizing and directing the Clerk of the above-entitled Court to transmit to the United States Court of Appeals for the Ninth Circuit all

of the exhibits introduced at the trial of the above-entitled cause.

Dated this 31st day of October, 1951.

/s/ WILLIAM H. KINSEY,
Of Attorneys for Plaintiff.

/s/ DONALD W. McEWEN,
Of Attorneys for Defendant.

[Endorsed]: Filed Oct. 31, 1951.

[Identical Stipulation filed Oct. 31, 1951, in Civil No. 5759.]

[Title of District Court and Cause.]

Civil No. 5758

ORDER

This matter coming on to be heard upon motion of defendant, Hugh H. Earle, for an order authorizing and directing the Clerk of the above-entitled Court to transmit to the United States Court of Appeals for the Ninth Circuit all of the exhibits introduced at the trial of the above-entitled cause, and the Court having considered the stipulation of the parties on file herein authorizing said transmission of the exhibits and being advised, it is

Ordered that the Clerk of the above-entitled Court be, and he is hereby authorized and directed, to transmit to the United States Court of Appeals for

the Ninth Circuit all of the exhibits introduced at the trial of the above-entitled cause.

Made and entered this 31st day of October, 1951.

/s/ CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed Oct. 31, 1951.

[Identical Order filed Oct. 31, 1951, in Civil No. 5759.]

[Title of District Court and Cause.]

Civil Nos. 5758 and 5759

AFFIDAVIT

United States of America,
District of Oregon—ss.

I, Donald W. McEwen, being first duly sworn, depose and say that I am Assistant United States Attorney for the District of Oregon and one of the Attorneys of record for the defendant in the above-entitled action;

And that on the 26th day of October, 1951, I did serve on Attorneys for plaintiff a true and correct copy of the Designation of Contents of Record on Appeal in the above-entitled action by depositing in the United States Post Office at Portland, Oregon, on the 26th day of October, 1951, a duly certified copy thereof enclosed in an envelope, with postage

thereon prepaid, addressed to Wilbur, Beckett, Oppenheimer, Mautz & Souther, Attorneys at Law, Board of Trade Building, Portland, Oregon, Attorneys of record for plaintiff.

/s/ DONALD W. McEWEN,
Assistant United States
Attorney.

Subscribed and sworn to before me this 31st day of October, 1951.

[Seal] /s/ V. E. HARR,
Notary Public for Oregon.

My Commission expires 7/11/55.

[Endorsed]: Filed Oct. 31, 1951.

United States District Court
District of Oregon

Civil No. 5758

W. J. JONES & SON, INC.,

Plaintiff,

vs.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,

Defendant.

Civil No. 5759

W. J. JONES & SON, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Tuesday, May 15, 1951

Before: Honorable Claude McColloch,
Judge.

Appearances:

E. K. OPPENHEIMER, and

WILLIAM H. KINSEY,

WILBUR, OPPENHEIMER, MAUTZ &
SOUTHER,

Attorneys for Plaintiff.

A. F. OEHMANN,

Special Assistant to the United States Attorney, and

DONALD W. McEWEN,

Assistant United States Attorney

Attorneys for Defendant.

TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS

Mr. McEwen: If your Honor please, in the case of Jones vs. United States and Jones vs. Earle, Civil No. 5759 and Civil No. 5758, I am pleased to present Mr. Oehmann. I would like to move his admission specially in this case.

The Court: That is satisfactory.

Mr. Oehmann: Thank you, your Honor.

(Opening statements made by counsel for the respective parties.)

CLAYTON R. JONES

was thereupon produced as a witness on behalf of Plaintiff, and, being first duly sworn, was examined and testified as follows:

Mr. Oppenheimer: If the Court please, and Counsel for the Government, there are probably some preliminary matters that we should attend to. I would like to offer certain exhibits. I assume it is satisfactory that can be done at the conclusion of the testimony.

The Court: In the usual tax case I have found this serves the purpose: I usually say that all ex-

(Testimony of Clayton R. Jones.)

hibits identified by the parties in their pre-trial conference and which have been marked will be deemed offered and admitted, subject to any objection stated in the pre-trial order or any objections that may be hereafter stated prior to the submission of the case. [2*]

Mr. Oppenheimer: I may want to refer to the exhibits as we proceed.

The Court: Yes.

(The following exhibits were thereupon offered and received in evidence:)

Plaintiff's Exhibits.	Description.
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No. 1—Plaintiff's Income Tax Return for the calendar year 1948.

No. 2—Plaintiff's Income Tax Return for the calendar year 1946.

No. 3—Plaintiff's Income Tax Return for the calendar year 1947.

No. 4—Plaintiff's Income Tax Return for the calendar year 1944.

No. 5—Plaintiff's Excess Profits Tax Return for the calendar year 1944.

No. 6—Plaintiff's 1946 Refund Claim.

No. 7—Plaintiff's 1947 Refund Claim.

No. 8—Plaintiff's 1944 Refund Claim.

No. 9—Revenue Agent's report on examination of plaintiff's 1946 refund claim and on examination of 1948 bad debt deduction.

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Clayton R. Jones.)

Plaintiff's Exhibits.	Description.
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- | | |
|---------------|---|
| No. 10— | Revenue Agent's report on examination of plaintiff's 1947 refund claim. [3] |
| No. 11— | Revenue Agent's report on examination of plaintiff's 1944 refund claim. |
| No. 12— | Revised statement on Revenue Agent's report covering examination of 1946 return of Clayton R. Jones. |
| No. 13 to 44— | 32 promissory notes of Mina del Refugio, S.A., payable to Clayton R. Jones, dated various dates from November 30, 1944, to December 30, 1946, aggregating \$121,763.74. (The individual notes have been separately numbered 13 to 44, inclusive.) |
| No. 45— | Articles of Incorporation and Bylaws of Mina del Refugio, S.A., in Spanish, certified by the Consul of the United States at Nogales, Sonora, Mexico. |
| No. 46— | Certified translation of the Articles of Incorporation and Bylaws identified in Exhibit 45. |
| No. 47— | Original minute book of Mina del Refugio, S.A., in longhand and in Spanish. |
| No. 48— | Translation of the minute book identified in Exhibit 47. |
| No. 49— | Stock book of Mina del Refugio, S.A. |
| No. 50— | Book of Mina del Refugio, S.A., containing record of cash received, check record and journal entries. |

(Testimony of Clayton R. Jones.)

Plaintiff's Exhibits.	Description.
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|--|--|
| No. 51—General ledger of Mina del Refugio, S.A. | |
| No. 52—Letter dated June 30, 1944, from D. D. Kroder to Clayton R. Jones. [4] | |
| No. 53—Mining option agreement dated July 31, 1944, between Clayton R. Jones, John C. Higgins and Daniel Kroder. | |
| No. 54—Supplemental agreement dated August 31, 1944, between Kroder, Jones and Higgins, and related letter from Higgins to Kroder, dated August 31, 1944. | |
| No. 55—Trust agreement dated September 1, 1944, between Clayton R. Jones, John C. Higgins and D. E. Harris, with attached letter from Juan F. Robinson to D. E. Harris, dated August 10, 1944. | |
| No. 56—Translation of option and lease agreement dated October 31, 1944, from Jorge F. Robinson, Juan F. Robinson and Ana Robinson to Mina del Refugio, S.A. | |
| No. 57—Agreement dated November 20, 1944, between Clayton R. Jones, D. E. Harris and John C. Higgins. | |
| No. 58—Copy of the minutes of the meeting of the Board of Directors of Mina del Refugio, S.A., dated November 20, 1944. | |
| No. 59—Agreement dated March, 1945, between Clayton R. Jones, John C. Higgins and D. E. Harris. | |

(Testimony of Clayton R. Jones.)

Plaintiff's Exhibits.	Description.
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No. 60—Letter dated April 17, 1945, from
Walter M. Wells to Clayton Jones.

No. 61—Letter dated July 29, 1945, from A. J.
Klamt to Higgins and Jones. [5]

No. 62—Letter dated March 21, 1946, from
John C. Higgins to Malcolm C. Little.

No. 63—Letter dated March 25, 1946, from
John C. Higgins to Arthur E. Johnson.

No. 64—Letter dated May 16, 1946, from Clay-
ton R. Jones to Walter Wells.

No. 65—Journal entry sheet of plaintiff for Au-
gust 31, 1946.

No. 66—Journal entry sheet of plaintiff for De-
cember 31, 1946.

No. 67—Account sheet of Clayton R. Jones with
plaintiff for 1946.

No. 68—Letter dated April 4, 1947, from Clay-
ton R. Jones to Walter M. Wells.

No. 69—Letter dated August 4, 1947, from John
C. Higgins to Juan F. Robinson.

No. 70—Letter dated January 15, 1948, from
A. J. Klamt to John C. Higgins.

No. 71—Letter dated March 9, 1948, from Clay-
ton R. Jones to Walter M. Wells.

No. 72—Letter dated April 1, 1948, from A. J.
Klamt to Mina del Refugio, Portland,
Oregon.

No. 73—Letter dated April 8, 1948, from Clay-
ton R. Jones to A. J. Klamt.

(Testimony of Clayton R. Jones.)

Plaintiff's Exhibits.	Description.
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No. 74—Telegram dated November 15, 1948, from Clayton R. Jones to A. J. [6] Klamt.

No. 75—Two letters dated December 27, 1948, from John C. Higgins to A. J. Klamt.

No. 76—Copy of minutes of meeting of the Board of Directors of Mina del Refugio, S.A., held on December 27, 1948.

No. 77—Statement dated December 27, 1948, signed by A. J. Klamt.

No. 78—Journal entry sheets of plaintiff for December 31, 1948.

No. 79—Various journal entry sheets and account sheets of plaintiff showing accrual of interest on Mina del Refugio, S.A., notes.

Direct Examination

By Mr. Oppenheimer:

Q. Will you state your name, please?

A. Clayton R. Jones.

Q. What position do you occupy in the W. J. Jones & Son corporation? A. President.

Q. State the ownership of the stock which you had in W. J. Jones & Son, Inc., during the years 1946, 1947 and 1948.

A. It ranged—I personally owned in those years between 47 and [7] 49 per cent.

(Testimony of Clayton R. Jones.)

Q. When did you first have called to your attention the mining property, which will be known in this record as the Mina del Refugio? In what manner was that property called to your attention?

The Court: In your opening statement you began it that "This was the lost Mexican mine."

Mr. Oppenheimer: As your Honor will see as things develop.

The Court: You know that famous old scheme, I guess. That letter has been coming into the United States for a hundred years.

Mr. Oppenheimer: Oh, yes, something like some of these schemes where a fellow still owns Long Island.

The Court: Was it a mining property?

Mr. Oppenheimer: Yes.

The Court: What state?

Mr. Oppenheimer: Sonora, Mexico.

The Witness: A hundred miles east of Hermosillo.

Q. (By Mr. Oppenheimer): Where with relation to Mexico City?

A. 200 miles south of Nogales, Arizona, 200 miles south of the border.

Q. I now call your attention to Exhibit 52, which is a letter from D. D. Kroder, addressed to you, under date of June 30, 1944, and will ask you to briefly tell the Court whether that is a communication you received and the circumstances. [8]

A. This is the first direct communication I had from Mr. Kroder who, in turn, had been in touch

(Testimony of Clayton R. Jones.)

with Mr. Wells in New York, who had first notified me about the mining property.

The Court: I will look at the exhibits as they come in, as you refer to them.

Mr. Oppenheimer: Yes, your Honor. Do you want them read at this time?

The Court: No, I will read them.

Q. (By Mr. Oppenheimer): After you received Exhibit 52 what, if anything, did you do?

A. I contacted a friend of mine, Mr. Harris, whom I had been in previous mining ventures with, and who was then in California, and told him about it and asked him whether he would like to go down there and look the property over. He did, and his preliminary observations were favorable.

I had never had any experience in underground mining, and I contacted Mr. John C. Higgins of Portland, who had had experience in underground mining, and asked him whether he would be interested in the proposition, and he replied in the affirmative; and we decided to send down a geologist and mining manager by the name of Mr. Klamt, and an engineer and mining manager by the name of Mr. Gibson, to make a further report on the property.

Q. After that did the negotiations culminate in the execution of an option? A. They did. [9]

Q. I now call your attention to Exhibit 53 and ask you whether or not that is the mining option that you say was the culmination of this investigation, the same bearing date the 31st day of July,

(Testimony of Clayton R. Jones.)

1944, and signed by Daniel D. Kroder, first party, and by John C. Higgins and Clayton R. Jones as second parties?

A. This is the option which was executed by Mr. Higgins and myself and Mr. Kroder.

Q. I particularly call your attention to two or three paragraphs of that option of 1944. Paragraph 4 reads as follows:

“Parties hereto contemplate the organization of a Mexican corporation to be named as grantee in the deed conveying said mining property and the \$35,000 provided by second parties hereto shall be in the form of a loan to said corporation represented by notes of the corporation and repayable within two years from their date, with interest at five per cent. Said notes shall be payable either at or before their maturity before any dividends shall be declared by said corporation.

“5. The stock of the aforesaid corporation shall be distributed one-third to first party and two-thirds to second parties.

“6. First party agrees to devote all of his time to the management of the affairs of said corporation during a development period of four months and he shall [10] receive therefor a salary of three hundred dollars (\$300) per month.”

Was that \$35,000 advanced as called for by the option?

A. It was.

(Testimony of Clayton R. Jones.)

Q. In that option, which is Exhibit 53, it is recited in one of the paragraphs that one-third was to go to Kroder. Will you please state the circumstances under which Kroder was to acquire one-third in the venture?

A. He was to acquire it due to the fact that he had been the finder in bringing it to Mr. Wells, who in turn had brought it to me, plus the fact that he was to devote his full time at a specified salary for a certain length of time in the exploration and exploitation of the property.

Q. Was any payment made by Mr. Kroder for that one-third interest?

A. No. Well, there was—that was subsequently changed.

Q. I will come to that, but was any payment made for any interest by Kroder in the venture?

A. Not at that time, to my recollection.

Q. Did he, at any subsequent time, put any money in the venture?

A. I don't understand. I guess I didn't understand that question. I thought you said did we pay Kroder?

Q. No. We will come to that later on.

A. Will you restate that question? I don't understand it.

(Question read.) [11]

A. No.

Q. (By Mr. Oppenheimer): Was that one-

(Testimony of Clayton R. Jones.)

third interest subsequently changed to another proportion? A. It was.

Q. I now call your attention to Exhibit 54, which is a letter from Mr. Daniel D. Kroder to Mr. Higgins and yourself under date of August 9, 1944, to which is attached a copy of the mining option and supplemental agreement. I will ask you to state the circumstances under which that document was executed.

A. This letter and document pertain to a change of agreement wherein the Kroder interests were to receive twenty per cent instead of the original thirty-three and one-third per cent, due to the fact that Kroder did not want to be tied down at this mine and Kroder's twenty per cent was divided between himself, ten per cent, and Mr. A. E. Johnson, ten per cent.

Q. How did Mr. Johnson come into the picture, if you know?

A. He was a finder with Mr. Kroder, and there had been a previous agreement between the two of them that they would share and share alike.

Q. Was the property finally acquired under a trust agreement? A. It was.

Q. I now call your attention to Exhibit 55, which is the agreement of trusteeship between Clayton R. Jones and John C. Higgins, as First Parties, and D. E. Harris, as Second Party, and ask if this is the trust agreement under which the property was acquired? [12]

(Testimony of Clayton R. Jones.)

A. Yes, sir. This is the trust agreement under which the property was acquired.

Q. State whether or not a going Mexican corporation was acquired by Mr. Higgins, Mr. Harris and yourself?

Mr. Oehmann: I object to the characterization of a "going Mexican corporation." There is no evidence whatever that it was a going concern.

Mr. Oppenheimer: I will delete the word "going," and change it to "a corporation in existence." Is that satisfactory?

Mr. Oehmann: Surely.

Q. (By Mr. Oppenheimer): Did you acquire an existing Mexican corporation?

A. We did.

Q. What was the name of the corporation?

A. Mina del Refugio.

Q. Did you have anything to do with the organization of that corporation? A. No.

Q. Did any of your associates? A. No.

Q. What became of the mining rights acquired under that trust agreement that has been referred to as Exhibit 55?

A. They were assigned to the corporation referred to.

Q. I now call your attention to Exhibit 56 and ask you if that is the document by which the mining rights were transferred from [13] the trusteeship to the Mexican corporation? A. Yes, it is.

Q. I will ask you if, subsequent to the assignment, or thereabouts, an agreement was entered into

(Testimony of Clayton R. Jones.)

between Clayton R. Jones, D. E. Harris and John C. Higgins as first parties, and Mina del Refugio as the company? A. Yes.

Q. I now call your attention to Exhibit 57 and ask you if that is the agreement?

A. Yes, it is.

Q. Of course, the agreement speaks for itself, but does it cover what should be done in connection with the advances of money? A. Yes.

Mr. Oppenheimer: With your Honor's permission, may I read certain paragraphs of Exhibit 57?

I am now reading subparagraph (c) of Clause First—this agreement bears date the 20th day of November, 1944.

“(c) Upon demand of the parties entitled thereto, the Company shall execute and deliver to each of the First Parties its note or notes, payable two years from date, for the agreed purchase price and reasonable value of all used equipment heretofore or hereafter sold and delivered to the Company; the principal sum of said note or notes shall bear interest at six per cent per annum [14] from the date or dates when the equipment represented thereby shall have been delivered for use at the Robinson mining properties, said interest being payable at maturity.

“(d) All moneys advanced or expended by First Parties for any of the purposes described in Clauses (a) and (b) above, together with

(Testimony of Clayton R. Jones.)

the amounts representing the reasonable purchase price and value to the Company of the mining and milling equipment sold and delivered to the Company as stated in Clause (c) above, together with interest thereon in accordance with the terms above stated, shall become obligations of the Company from the dates when such moneys were advanced or expended and from the dates of delivery to the Company of the aforesaid equipment, and the Company shall be and remain indebted under open account for the aforesaid amounts and interest thereon as aforesaid to the respective persons who advanced or expended the moneys or who sold and delivered the equipment, until such persons shall have been reimbursed by the Company therefor or until the Company shall have executed and delivered to such persons its note or notes therefor as above provided.

“(e) Upon demand therefor by the party entitled thereto, the Company shall execute and deliver to each of [15] the First Parties chattel mortgages on all items of equipment sold and delivered to the Company by such party, giving to such party a lien on such items of equipment to secure the payment of the purchase price therefor and the interest thereon as above provided.”

Q. Was the agreement, which is represented by Exhibit 57, ever ratified by the corporation known as Mina del Refugio? A. It was.

(Testimony of Clayton R. Jones.)

Q. I hand you now Exhibit 58 and will ask you if those are the minutes of the corporation ratifying the agreement, Exhibit 57?

A. Yes. This is the ratification, the minutes of the meeting.

Q. What was the date of that meeting?

A. The 20th day of November, 1944.

Q. Did you advance various sums of money personally, from time to time, to Mina del Refugio?

A. I did.

Q. Were those advances represented by promissory notes? A. They were.

Q. I now call your attention to Exhibits 13 to 44, inclusive, which are promissory notes which have a face total of \$121,763.74, and ask you if you ever saw them before and under what circumstances?

A. I have seen these before. They were handed me by the President of Mina del Refugio corporation, Mr. John C. Higgins, in return for cash advances that I had made to the corporation. [16]

Q. State whether or not you advanced any sums in excess of the amounts represented by Exhibits 13 to 44? A. I did.

Q. What was the amount of the total advances, without including interest?

A. The total advances above that were about \$30,000.

Q. So that would mean total advances of approximately \$150,000?

A. Yes. It was a little in excess of that.

(Testimony of Clayton R. Jones.)

Q. State whether or not these notes, principal or interest, in whole or in part, have ever been paid.

A. They have not.

Q. Have you received anything towards the payment of these notes from the liquidation of the mine?

A. Yes. There was a sum distributed, approximately \$9,000—that was the share received by W. J. Jones & Son.

Q. That is the corporation? A. Yes.

Q. After you acquired these notes which are in evidence as Exhibits 13 to 44, what, if anything, did you subsequently do with these notes?

A. I sold these notes to the corporation at their face value, without recourse. Some of them were sold in August, the end of August, 1946, and some of them were sold in the end of December, 1946.

Q. Do you remember how many of the notes were sold on August 31, [17] 1946?

A. I don't have those figures in my mind.

Q. All were eventually sold, together with the interest? A. All \$120,000 worth, yes.

Q. When we talk about \$121,000, that is the face amount, but the interest went with them?

A. Yes.

Q. What did you receive for the sale of those notes?

A. A credit on the books of W. J. Jones & Son for cash advances that that company had made to me.

Q. Prior to the time you received this credit,

(Testimony of Clayton R. Jones.)

were you a creditor or debtor of W. J. Jones & Son?

A. I was a creditor of W. J. Jones & Son.

Q. Before you sold the notes, how did your account stand?

A. I owed them about \$100,000.

Q. So you were a debtor rather than a creditor?

A. Well, I owed them—yes, I was a debtor.

(Recess.)

Q. (By Mr. Oppenheimer): You spoke about a figure of \$9,000 being salvage recovery. During the recess did you check to ascertain the accurate figures and, if so, will you tell the Court what they are?

A. All right. W. J. Jones & Son recovered \$8,694.42 as a result of the salvage of the equipment; that is, their proportion. [18]

There had been an estimated recovery set up on the books in 1948 of \$8,775, and there was a deficiency in the recovery of \$80.58.

Q. After W. J. Jones & Son, Inc., acquired the notes in question, which are Exhibits 13 to 44, inclusive, state whether or not they were set up on the regular books of the corporation?

A. They were.

Q. I now call your attention to Exhibits 65 and 66, which I believe are admitted to be the original records of W. J. Jones & Son, and ask you to call the Court's attention to the manner in which they were set up on the books. Take Exhibit 65, first.

(Testimony of Clayton R. Jones.)

A. Under date of August 31, 1946, there is a general entry as follows: Notes receivable, Mina del Refugio, \$102,930.96; accrued interest, \$4,654.57, making a total of \$107,585.53.

There is a second entry dated December 31, 1946, in the journal which shows: Notes receivable, Mina del Refugio, \$18,832.78. Both of those entries are a credit to myself. The first one is a credit of \$107,585.53, and the second one is a credit of \$18,832.78.

Q. I think you have previously testified that prior to the credits you have just outlined in your testimony you were owing to the corporation, in round figures, about \$100,000. A. I did.

Q. Did you subsequently draw on this credit that was over \$100,000. [19]

A. I don't understand that question.

Q. You had a credit on the books of W. J. Jones & Son, Inc., in excess of the indebtedness, by virtue of the corporation buying these promissory notes. In other words, the corporation then owed you money?

A. No, they did not. I still owed the corporation about three or four thousand dollars.

Q. You did?

A. According to my recollection.

Q. On what basis did W. J. Jones & Son, Inc., operate?

A. They kept their books on an accrual basis.

Q. How were these notes carried on their books?

A. The interest was accrued each month and

(Testimony of Clayton R. Jones.)

credited to the interest account, as a profit or gain, and at the end of each year there was income tax paid to the government on that interest so accrued from the notes that the corporation purchased from me.

Q. I now call your attention to Exhibit 79, the income ledger, and ask you if these are records of W. J. Jones & Son, Inc., showing the accrual of interest on the notes in question? A. They are.

Q. I will ask you to state if eventually this indebtedness owing to the corporation by the Mina del Refugio was charged off on the books of W. J. Jones & Son, Inc.? A. It was. [20]

Q. I now call your attention to Exhibit 78 and ask that you point out the charge-off?

A. I am reading from the journal entry under date of December 31, 1948. There is a charge to Bad Debts of \$143,330.21, and the offsetting entries are as follows: Notes Receivable, \$121,763.74; interest receivable, \$21,566.47, and the explanation following that entry reads as follows:

“Charging off bad debt account Mina del Refugio, notes receivable and accrued interest to December 31, 1948.”

Then I find another entry under the same date, which debits Mina del Refugio \$8,775, and a credit to profit and loss of \$8,775, and an explanation under this entry as follows:

(Testimony of Clayton R. Jones.)

“To set up estimated amount of recovery on notes of Mina del Refugio assigned to this corporation by Clayton R. Jones, 39 per cent of \$22,500.”

Q. Do you know a man by the name of Walter M. Wells? A. I do.

Q. Without too much elaboration, tell us briefly who Walter M. Wells was.

A. He is president of the Isthmian Steamship Corporation of New York City, a personal friend of mine for over twenty years and the man who originally wrote me about this Mina del Refugio property, in which I subsequently became interested.

Q. Did he ever acquire any interest in this Mina del Refugio? [21] A. He did.

Q. What? A. He did.

Q. I call your attention to Exhibit 60, which is a letter from Walter M. Wells, under date of April 17, 1945. Tell the Court what interest he acquired and what was paid for it?

A. He acquired nine per cent of the mine, of the capital stock of the mine, from Mr. Kroder, for the sum of \$5,000 and also a small sum which was advanced before that period.

Q. Did Mr. Higgins and yourself acquire any interest of either of these finders? A. Yes.

Q. I call your attention to Exhibit 63, which is a letter from John C. Higgins to Arthur E. Johnson, under date of March 25, 1946, and ask you to tell the Court when you acquired Johnson's interest and under what circumstances?

(Testimony of Clayton R. Jones.)

A. On March 25, 1946, Mr. Higgins wrote a letter to Mr. Johnson, the co-finder with Mr. Kroder wherein Mr. Higgins, in behalf of himself and myself, paid Johnson \$4,000 for the purchase of nine per cent of his stock.

This was brought about by the fact that Mr. Johnson developed cancer, and was told he had a very short time to live and he wanted to clean up his affairs before his demise.

Q. Without detailed elaboration, what were the prospects of this mining venture known as Mina del Refugio? [22]

A. At what time?

Q. From the beginning.

A. Well, from the beginning we thought that we had a money-making mining venture. We anticipated that we would not have to expend in excess of \$50,000 when we started this venture. We figured that Mr. Higgins and I would advance the moneys jointly. Mr. Harris had come in for \$3,000 and that meant that Higgins and I would, roughly, advance \$23,500 each.

The plan of operation was this: We had reason to believe that we had high-grade ore that we could ship to the smelter and get our exploration and exploitation money back from this high-grade ore without any large capital sum being invested.

We did ship two or three cars of ore. We made a profit on the ore we shipped, but the shipping charges were so high and the values of our ore went down in value. We discontinued shipping ore and

(Testimony of Clayton R. Jones.)

we blocked out an amount of ore which our engineer estimated would amount to \$409,000.

Q. Let me interrupt you there. I now hand you Exhibit 61 and ask you what this report demonstrates? I appreciate it speaks for itself, but this is in connection with your present testimony.

A. Under date of July 29, 1945, there was a letter addressed to Messrs. Higgins and Jones. Without going into detail, it states that the mine development was in a most favorable position. The words "gratifying results" are used here, with details as [23] to what was found on each level and on certain raises.

Q. How much in dollars and cents does that report show as ore being blocked out?

A. This statement shows that there was 8,352 tons of ore blocked out at an estimated value of \$409,163.

Q. Was there any ore that was not blocked out?

A. Yes. At that time we thought we had reason to believe that these veins would run a long ways on the levels on which we were working, and on the downward development we had no reason to believe that they would pinch out there either. At this time the prospects of this mine were very rosy.

Q. I call your attention to Exhibit 68, which is a letter you wrote to Walter M. Wells, under date of April 4, 1947, you having mentioned Mr. Wells in your previous testimony, and I will ask you to tell the Court what the first gold bricks that were developed showed and whether they were of value?

(Testimony of Clayton R. Jones.)

A. Under date of April 4, 1947, after we had erected a mill at a very substantial investment, the first six bricks which were melted down amounted to about \$7,000 in American money.

Q. What were the prospects?

A. The prospects were very rosy. As stated in this letter, the mill was getting shaken down, and we hoped to do better.

Q. I will ask you to state whether you ever had an inquiry as to whether or not you and your associates were willing to sell your interest in this mine? [24] A. I did.

Q. I call your attention to Exhibit 64 and ask you to outline to the Court the suggestion of sale.

A. The letter you have handed me is a letter I wrote on May 16, 1946, in response to a request I had from Mr. Wells in New York, asking us to place a valuation on the mine, on our interest in the mine, namely, Mr. Higgins and myself.

After discussion with Mr. Higgins, we offered to sell our respective shares in the mine for \$500,000.

Q. What date was that? A. May 16, 1946.

Q. I call your attention to Exhibit 69 and ask you to advise the Court when you and your associates paid the last \$10,000 on the original option price for the mine in question?

A. This was paid on August 4, 1947. There was a letter dispatched concerning a telegram that we were ready to make final payment on the properties in the sum of \$10,000.

Q. What date was that, please?

(Testimony of Clayton R. Jones.)

A. August 4, 1947.

Q. I now call your attention to Exhibit 70, which is a letter from the engineer, A. J. Klamt, addressed to John C. Higgins, under date of January 15, 1948, and ask you to tell the Court when you first had any intimation that things were not going according to schedule and according to your understanding that the project was on a successful basis. [25]

A. On January 15, 1948, there was a letter written from Hermosillo, Sonora, to John C. Higgins, stating that the ore shoot was much shorter than he had expected on the 260-foot level, and that the ore was changing—the vein was changing from ore to gouge, and this was the first intimation that I had that we were not developing new ore and that there might be something wrong.

Q. What did you do after receipt of that letter or when that letter came to your attention?

A. I conferred with Mr. Higgins, and it was decided I would go down there and make a personal examination.

Q. Did you go to Mexico? A. I did.

Q. What did you find, if anything?

A. I found that the blocked-out ore previously referred to in Blocks A, B and C had been exhausted, that the recovery was nowhere near what our engineer had prognosticated; and that the remaining ore in the other two blocks, namely "E" and "F," was very far short of the tonnage that we anticipated.

Q. Upon your return did you make a report,

(Testimony of Clayton R. Jones.)

outside of a personal report to Mr. Higgins or anyone else, to Mr. Walter M. Wells, in New York?

A. I did.

Q. I call your attention to Exhibit 71 and ask you if that is a letter you wrote? [26]

A. On my return I wrote a letter to Mr. Wells, under date of March 9, 1948, and explained in that letter that during the previous year we had experienced a \$20,000 loss and our recoveries fell down 60 per cent, and stated that in my belief at that time we could run about a year and that unless they turned up with some new ore bodies this project was going to be a colossal failure.

Q. I call your attention to Exhibit 72, which is a letter written to Mina del Refugio by A. J. Klamt, and ask you whether the inability to find a new vein of new ore continued?

A. This is a letter dated April 1, 1948, going into detail as to exploration work, and the summation of it is that there was no new ore being developed.

Q. I now hand you Exhibit 73 and ask you if you will tell the Court whether you responded to Mr. Klamt's letter, which is Exhibit 72?

A. On April 8, 1948, I replied to the letter previously referred to, in the foregoing exhibit, and confirmed we had found no new ore and that he was not getting any results in the pumping operation on another mine on this same property, namely, the Noche Bueno mine.

Q. Was it in November, 1948, that you finally

(Testimony of Clayton R. Jones.)

decided to dismantle the mine? A. Yes.

Q. In connection with that I call your attention to Exhibit 74. [27]

A. On November 15, 1948, there was a telegram dispatched under my signature to Mr. Klamt, reading as follows:

“Higgins and I request you commence dismantling mill immediately transporting all supplies and materials to our corral in Hermosillo. **Your instructions** are to list each truckload in detail leaving mine and have Smith check in detail and receipt, advising Portland office of quantities shipped each week. We desire you salvage all possible materials, especially lumber, for resale at Hermosillo. We suggest you bring pipe in first and advertise quantity and sizes in Hermosillo paper. You will telegraph offers to Portland for confirmation.”

Q. Did Mr. Higgins enter into the so-called dismantling agreement and, if so, I will call your attention to Exhibit 75, which bears date December 27, 1948, with accompanying attached letter signed by Mr. Higgins.

A. On December 28, 1948, there was an agreement entered into with Mr. Klamt for salvaging the equipment on a lump-sum basis, which was payable to the Mina del Refugio corporation. Anything **over that amount** that he received was to be his compensation for selling the property, and it relieved the corporation of any further salary expense and rental of the corral, and, in the judgment of

(Testimony of Clayton R. Jones.)

the directors, that was deemed the most expeditious way to dispose of the property. [28]

Q. I call your attention to Exhibit 76, minutes of a special meeting of the board of directors of Mina del Refugio, in connection with this dismantling, which speaks for itself. First, I will ask you if those are the minutes?

A. Yes, these are the minutes of a meeting that we held in Mr. Higgins' office on December 27, 1948.

Q. Did you ever receive any report from Mr. Klamt, the engineer, certifying that there was no further ore? A. We did.

Q. I call your attention to Exhibit 77 and ask you to state whether or not that is the certification?

Mr. Oehmann: I object to that exhibit, your Honor, on the ground, first, that it is an opinion of Mr. Klamt that what these men did was justified. I don't know whether it is intended to be the statement of an expert, but it does not appear to me to be competent at all in this case.

Mr. Oppenheimer: It is a sort of an opinion. I will not press the matter, however. It has been covered here in this certificate.

The Court: If you want to put it in, it is admitted subject to the objection.

Mr. Oppenheimer: In line with your Honor's ruling that all pre-trial exhibits are introduced subject to objection, I will assume that they are in and that if there are any specific objections the Government will make them. [29]

The Court: Yes.

(Testimony of Clayton R. Jones.)

Mr. Oppenheimer: You may cross-examine.

Cross-Examination

By Mr. Oehmann:

Q. Mr. Jones, I believe you testified that you owned at the most forty-nine per cent of the stock of W. J. Jones & Son, Inc., in the years referred to. Is it not a fact that you owned about fifty-nine per cent in December, 1946?

A. I could not answer that question without reference to the books. I believe there is a statement in court by the secretary of our corporation that I owned forty-seven and forty-nine per cent in 1946. I might be in error, but it is not intentional.

Mr. Oppenheimer: I have a tabulation if the Government wants it. It is not in evidence.

Q. (By Mr. Oehmann): The balance of the outstanding stock was owned by members of your family, was it not, Mr. Jones? A. Yes.

Q. All of it? A. Yes.

Q. During the years involved—that is, between 1944 and 1946, you advanced approximately \$150,000 to the mine? A. Yes, sir.

Q. Mr. Higgins advanced the same amount, approximately, did he not? [30] A. Yes, sir.

Q. In August, 1946, you had an outstanding balance that you owed W. J. Jones & Son, Inc., of about \$100,000, did you not?

A. Approximately.

(Testimony of Clayton R. Jones.)

Q. Did the money that you advanced to the Mina del Refugio come from this corporation?

A. Yes, and charged to my account.

Q. Charged to your account? A. Yes.

Q. It was principally those withdrawals from your company that built up the balance which you offset in 1946 with the mining company note?

A. That is correct, plus personal money.

Q. Yes, but the larger part went right into the mining properties? A. That is right.

Q. You recall at the outset approximately \$1,000—that is, 5,000 pesos—were paid in for the stock of the mining company? A. That is correct.

Q. It was about \$1,000, wasn't it?

A. Yes.

Q. What equipment did the mine have at the time you and Mr. Higgins took it over; that is, when you first signed up the agreement; I do not mean when you finally paid the \$35,000 but when you first took over? [31]

A. There was some very crude equipment turned over with the leases of very nominal value or practically none.

Q. Practically none? A. Yes.

Q. So, the \$1,000 paid in for the stock was the whole capital invested at the beginning, wasn't it?

A. No, sir.

Q. What else was invested?

A. There was a mining value in the prospects of that mine that in my opinion had a minimum value of \$50,000 and could run up into hundreds of

(Testimony of Clayton R. Jones.)

thousands, due to the fact that those veins showed such excellent progress at that time and——

Q. I am just talking about the time——

Mr. Oppenheimer: Let him finish.

Mr. Oehmann: The answer is not responsive. I am talking about the time when you first started operations, not after you determined by exploration what was there, but at the time you started.

Mr. Oppenheimer: Just a minute. If the Court please, the Government has asked a question and because the answer is not to counsel's liking that isn't any reason for shutting him off.

The Court: This is a very fine gentleman——

Mr. Oppenheimer: I know he is.

The Court: I know what he is speaking about. I am an old mining man. I come from Baker. [32]

Mr. Oehmann: I think your Honor knows.

The Court: I know what you are after.

Mr. Oehmann: A lot of the evidence that went in on direct was objectionable in the manner in which it was brought out or presented, but I made no objection.

The Court: Go ahead and develop it. You answer in your own way.

Q. (By Mr. Oehmann): You have testified you had great expectations of a substantial return on this \$1,000 investment. Isn't that what you testified to?

A. No, sir.

Q. Is that what you mean?

A. I didn't testify to that at all.

(Testimony of Clayton R. Jones.)

Q. What was your investment, then, aside from the \$1,000 that was paid in for the stock?

A. We had the investment of two engineers that we sent down there to get technical reports that, to the best of our knowledge, were reasonable reports on what that property should—on what that property showed, rather, and the samples that they took at the time led us to believe or led me to believe that this property had a minimum of \$50,000 value and it could run into the hundreds of thousands.

Q. But you only invested what you paid for the stock, plus the expenses of the engineers and plus your expenses down there. That is all you invested, isn't it? [33]

Mr. Higgins: I know some of these facts. I think Counsel is mistaken.

Mr. Oehmann: I object to that statement. I have no objection to Mr. Higgins being here, but I object to his making comments.

Mr. Higgins: I will make my comments in Counsel's ear, if I may.

The Court: We will put you on record as counsel, if you want to be.

Q. (By Mr. Oehmann): Isn't it a fact, Mr. Jones, that you paid an engineer to go down there and look at the property and report to you?

A. That is correct.

Q. Your expenses in connection with the investigation and report were about \$13,000, up to the time you signed the first option agreement?

A. Yes.

(Testimony of Clayton R. Jones.)

Q. So, then, it could be stated you had an investment of \$13,000 plus what you paid for the stock?

A. No. That is what I tried to tell you. You won't let me state my facts. The corporate structure did not come into existence until subsequent to the employment of Klamt and the estimates and samples that we had taken there.

Q. But that had been in existence for some time prior thereto. You just took over an existing corporation? [34]

A. Yes, that is right.

Q. Then it did not come into existence after you made your investigation and purchased the stock?

A. I meant the corporate structure came into the hands of the stockholders, referred to in this proceeding.

Q. You acquired your interest in it at the time you decided to take over and operate the mine?

A. That is right.

Q. You considered your investment represented what you expected to get out of the property in the way of a return from ore to be extracted? Is it your position that is what your investment was?

A. Will you read the question?

(Question read.)

The Court: We will recess at this time until 2:00 o'clock.

(Thereupon, at 11:45 a.m., a recess was taken until 2:00 o'clock p.m.) [35]

(Testimony of Clayton R. Jones.)

Court reconvened at 2:00 o'clock p.m., Tuesday, May 15, 1951, pursuant to recess.

Cross-Examination

(Continued)

By Mr. Oehmann:

Q. Mr. Jones, during the noon recess did you refresh your recollection from this schedule of your stock ownership in W. J. Jones & Son, Inc., the schedule which Mr. Oppenheimer had here?

A. Yes.

Q. Was your interest fifty-nine per cent in 1945?

A. Yes, I believe that is shown there. Is it?

Q. Yes. A. That is correct.

Q. Forty-eight per cent in 1946? A. Yes.

Q. Forty-seven per cent in 1947? A. Yes.

Q. And forty-seven per cent in 1948?

A. Yes.

Q. I direct your attention to Exhibit 59.

Mr. Oppenheimer: Pardon me. In reading this did I understand you to say his ownership was fifty-nine per cent in 1946?

Mr. Oehmann: 1945.

Mr. Oppenheimer: Thank you.

Q. (By Mr. Oehmann): Exhibit 59, the agreement between you and [36] Mr. Higgins and Mr. Harris, executed in March, 1945—you recall there was such an agreement? A. Yes.

Q. I direct your attention to Paragraph 4 which reads:

(Testimony of Clayton R. Jones.)

“It has been agreed by and between the parties hereto that ten per cent of the stock of the aforesaid corporation shall be issued to Arthur E. Johnson, or his assigns, ten per cent to Daniel D. Kroder, or his assigns, and the remaining eighty per cent of the stock of said corporation shall be divided between Clayton R. Jones, John C. Higgins and the above-named members of the Harris family, in proportion to their respective contributions in cash and in equipment, at its reasonable value, and that such stock shall be so distributed when the total of said contributions, as finally made, has been determined.”

It was your intention, was it not, at the time this agreement was executed, that your stock ownership should be in the same relation as your contributions of cash, equipment and advances and so forth?

A. That is correct, yes.

Q. Did you have any experience at all in this type of business, in mining?

A. I had had experience in the mining business, in gold dredging but not in underground mining. This was my first venture in [37] underground mining, but I had been in the mining business.

Q. You relied, did you not, on Mr. Klamt, as engineer or manager there?

A. To a certain extent, yes, and together with consultation with my other associates.

Q. There came a time, did there not, when you

(Testimony of Clayton R. Jones.)

didn't think much of his judgment, isn't that true? In your letter, Exhibit 71, your letter to Mr. Wells of March 9, 1948, after reciting—this is the letter in which you said the company “is a very sorry picture?”

A. That is correct.

Q. Do you recall that letter? A. Yes.

Q. Do you also recall saying, “This long-distance management is a very difficult situation and, although I do not believe Mr. Klamt wilfully led us astray, his judgment was very, very bad.”

A. That is right.

Q. You did not think much of his judgment, then, in March of 1948? A. No, sir.

Q. Would you give much weight to his judgment in December, 1948, with respect to the same kind of a problem?

A. I don't know what you are referring to as the same kind of a problem. The problem in 1948 has no resemblance to the problem referred to in that letter. [38]

Q. The problem in March, 1948, was to operate this mine profitably, wasn't it?

A. That was part of it, but it was mainly to discover additional ore.

Q. Which would have made it a profitable operation, wouldn't it? A. Yes, that is right.

Q. The problem at the end of 1948 was whether this mine was too unprofitable to justify the continuance of the operation, wasn't it?

A. No, that wasn't it.

Q. That is all it was, wasn't it? A. No.

(Testimony of Clayton R. Jones.)

Q. Why did you abandon it then?

A. Because we had used up all the ore that was found and there was no more new ore in sight.

Q. What percentage of the stock of the mine did you hold?

A. I think the records will show approximately thirty-nine per cent. That is from memory. I think the records are here.

Q. Did members of your family hold about ten per cent? A. No, I held the stock.

Q. How much did Mr. Higgins hold?

A. Approximately the same. We were on a fifty-fifty basis.

Q. That was throughout the whole term of this operation? A. Yes. [39]

Mr. Oppenheimer: If you want the figures here, I think we can give them.

Mr. Oehmann: I don't want any now, sir. Thank you.

Q. Tell me, will you, Mr. Jones, what is meant by "blocked out"? What is meant when you say you had four hundred and some thousand dollars in ore blocked out? A. Yes.

Q. What does that mean?

A. Well, in the first place there is a shaft put down and then there are winzes run each way and into various segments. These segments are marked out where the ore is found at different levels.

In this particular mine we had ore on the 90-foot level; we had it down on the 130 and down on the 200-foot level.

(Testimony of Clayton R. Jones.)

If you had a blackboard here, I could explain it to you, but there are segments in there and each—there are tests run at stated intervals above and below, and these are worked out arithmetically, I mean the value, and in this particular segment there is a value placed on it, and in this particular segment and this particular segment, and the sum of these segments, according to the tests, is the total value as represented in ore blocked out.

Q. These segments, then, were discovered by exploration? A. And tests, yes.

Q. And tests? [40] A. Yes.

Q. When you refer to a blocked-out section estimated at \$409,000, you mean that is a section which has been explored and tests have been made and it is estimated that ore at that value is there to be taken, but it has not been exploited yet?

A. Has not been what?

Q. Has not been exploited? You have not taken any ore out of there?

A. That is partially correct and partially incorrect, because in this exhibit that is here with regard to the blocked-out ore, it shows so many thousand tons on the dump of such-and-such a value, and it shows so much money is represented in each segment or section in the mine.

Q. Then, that four hundred some thousand included ore that had been extracted?

A. On the dump, ready for the mill.

Q. When did you get your mill completed?

A. Sometime in 1947; the exact date I am not familiar with.

(Testimony of Clayton R. Jones.)

Q. There was a substantial investment there, wasn't there? A. Yes.

Q. Do you remember how much?

A. Not without referring to the books.

Q. Do you recall at the end of 1944 you had advanced about \$14,500 and Mr. Higgins had advanced about \$14,500?

A. Approximately. [41]

Q. And at the end of 1945 you had advanced \$55,100 and he had advanced \$54,506; and at the end of 1946 you had advanced \$128,100 and he had advanced \$128,006; at the end of 1947 you had advanced \$157,600 and he had advanced about \$159,506. Is that about correct, as you recall?

A. Approximately, I would say.

Q. What business is your corporation engaged in? A. W. J. Jones & Son?

Q. Yes.

A. It is in the stevedoring and shipfitting business.

Q. Do you recall, Mr. Jones, the board of directors' meeting that was held to confirm the dismantling of the mine by Klamt? A. Yes.

Q. Do you remember that meeting that was held confirming the contract with him? A. Yes.

Q. He was to sell the equipment, and the first \$20,000 received was to be turned over to the company? A. Yes.

Q. To Mina del Refugio? A. Yes.

Q. And he was to keep anything else that he recovered? A. Yes.

(Testimony of Clayton R. Jones.)

Q. Do you recall that at that meeting a resolution was adopted—before the resolution was adopted, the minutes read: “It was [42] pointed out——”

I am reading now from Exhibit 76 which you previously identified.

“It was pointed out that there were outstanding notes of the company, and obligations for advances and equipment sales to it in the aggregate amount of more than \$300,000 which had been issued and incurred to evidence the obligation of the company to repay the loans and advances, and for sales of equipment made from time to time by Mr. Higgins, Mr. Jones and Mr. Dennison Harris and his family.”

Do you remember such a discussion?

A. Yes.

Q. Then, the resolution was adopted:

“Resolved that the officers of the company be and hereby are authorized and directed to make a pro rata distribution to the holders of the outstanding notes and other obligations of the company of any and all funds of the company realized under the agreement with Mr. Klamt confirmed in the letter from Mr. Higgins to Mr. Klamt, dated December 27, 1948, plus any funds of the company on deposit in its bank account after payment of all prior liabilities.”

Mr. Higgins was president, wasn't he, and you were secretary-treasurer? [43]

(Testimony of Clayton R. Jones.)

A. I think I was vice-president.

Q. Vice-president? A. Yes.

Q. Then this resolution was adopted:

“Resolved that the officers of the company be and hereby are directed and authorized to make whatever disposition of the corporate structure of the company that they deem most advisable, such authority to include dissolution of the company or abandonment of the corporate structure.”

What was done?

A. The agreement with Mr. Klamt was carried out and a final determination was reached and the money was distributed, and the corporate structure remains a nonentity, I guess you would call it.

Q. Did you take any formal steps to dissolve it?

A. I don't believe it has been dissolved.

Q. Did you take any steps to keep it in existence? A. I cannot answer the question.

Q. What happened to the real property and the mining claim?

A. They are still in the name, on the books, of the Mina del Refugio Corporation, as registered in the State of Sonora.

Q. As far as you know, the corporation is still in existence? It is still owned as a corporation, the land and the mining claims?

A. Well, I am not familiar with Mexican mining laws. I believe [44] if there isn't a certain amount of assessment work done each year the mining rights

(Testimony of Clayton R. Jones.)

revert back to the State, and I would imagine after a year the State would step in and take those mining rights back.

Q. At the time the corporation went in there and took over this property, what was the condition of the mine? You say there was no equipment there——

A. It was being worked. It was a going concern.

Q. Who was working it?

A. Juan Robinson, owner of the mine from whom we purchased it, was working it with ten to twelve men. It was a going concern when we purchased it.

Q. What equipment was there?

A. A railroad track, tram cars, picks and shovels and, I would think, a lot of dynamite and caps.

Mr. Oehmann: I think that is all.

Mr. Oppenheimer: That is all.

(Witness excused.) [45]

JOHN C. HIGGINS

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Oppenheimer:

Q. State your name, please?

A. John C. Higgins.

(Testimony of John C. Higgins.)

Q. What has been your business or profession in the past?

A. Well, I was practicing law in 1902 and practiced law until 1938, and at that time the doctors retired me from the practice of the law and told me to quit the law or anything else in the way of business, and I came out to where I had been raised and had gone to school, which is Oregon, and I have been here since.

After the first six months after their operation on me, I went actively back into the mining business and lumber business, and I continued in the mining business actively until the end of 1948, and in the lumber business until 1948, and I have been in other businesses since, but I have not practiced law since 1938.

Q. You have been interested in underground mining ventures and projects?

A. Yes. I began trying mining lawsuits while I was still in the West before going back to New York to practice, and continued actively in the trial of mining litigation for about twelve to fourteen years, and during that time, which was around from 1912 [46] to 1924, I also participated in the mining business as a proprietor and operator of mining properties and financing explorations and generally, outside of my law practice in the mining business, carried on a mining business of my own, and I continued to do it down until the end of 1948.

Q. How long have you known Clayton R. Jones?

(Testimony of John C. Higgins.)

A. I think the first time I ever met him was when he walked into my office in 1944 here in Portland and introduced himself. I may have seen him or had been introduced to him before, but I never had any relationship with him until he came in to talk to me about this Mexican mine.

Q. The Mina del Refugio.

A. It was not at that time the Mina del Refugio.

Q. It was not?

A. No. That name, Mina del Refugio, had nothing to do with that mine which we were interested in at that time. The Mina del Refugio was a Mexican corporation, merely a structure which we bought a considerable time after we became interested in this property and had begun to spend money on it.

Q. Was it about that time that you met Mr. Denny Harris?

A. Yes; and that was the first time I had met him.

Q. And, so, you discussed with Mr. Jones, and he with you, this mining project in Mexico?

A. That is right.

Q. I will call your attention to Exhibit 55, which is the Trust [47] Agreement, to Exhibit 56, which is the agreement whereby these mining rights were transferred to this Mexican corporation, and to Exhibit 57, which is the agreement between the Mexican corporation, Clayton R. Jones and D. E. Harris and John C. Higgins.

(Testimony of John C. Higgins.)

I think it will expedite matters, Mr. Higgins, if you will just give us the history and course of events in connection with those particular exhibits.

A. This is the first time I have looked at this agreement or at these documents for several years, so I haven't a very good recollection.

Q. Leave out the exhibits, then, and tell us in narrative form what the events were which led up to the culmination of the operation of this mining property.

A. Well, after Mr. Jones had come in and talked to me about the property, and I think Mr. Kroder, who was a promoter, a mine-finder, a fellow who goes out and locates properties and then tries to peddle them and retain an interest in them—after they had described the facts to me, on the facts as they related them and understood them it seemed to me interesting enough at least to justify an examination by mining engineers.

I did not examine the property and, in that situation, since Mr. Jones was suggesting that I take an equal interest with him the understanding that we would have to put up most of the money which was required to carry on, I suggested the employment of two men to make an examination. Mr. Jones left to me who [48] those two men were to be.

At that time I was carrying on an operation in Nevada which was an underground operation on a rather large scale near Virginia City. That property was being operated, as manager, by a man who

(Testimony of John C. Higgins.)

had had a good many years' experience in mining operations, a man by the name of Homer Gibson, who was very familiar with underground work.

Although he was not a graduate engineer, he had studied mining engineering and I regarded him as a very competent man, having practical operating judgment.

I had employed in connection with the Nevada operation that Mr. Gibson was running a man by the name of A. J. Klamt, who was a graduate mining geologist, at any rate a practicing mining geologist, a man of mature years who had spent a lifetime in the mining business.

I suggested that we jointly send Mr. Gibson and Mr. Klamt down to examine this property and to take samples at the property and examine the underground workings—it was an operating property at that time; had been operated on a small family or neighborhood scale, by Juan Robinson, who was mentioned by Mr. Jones, for many years, and apparently had been a reasonably profitable operation for the reason that it had supported the Robinson family and a whole retinue of relatives for many years, as I subsequently found out, on a very primitive basis, operated on a very primitive basis; all of the underground work [49] was hand work. They used jackhammers instead of compressed-air drills. They hammered steel into the face of the rock and, by hand, loaded the holes and blasted out the ore and they carried this ore in sacks on their backs

(Testimony of John C. Higgins.)

from the lower levels of the operation to the surface and there they loaded it in sacks or bags on burros and transported it, I think, a distance of 12, 15 or 18 miles, something like that, to a rail head in that area and shipped it as raw ore to a smelter in Northern Mexico, at a very heavy expense, of course, all the way through, and recovered enough value from the ore—and it had to be a high-grade ore in order to stand those costs involved in that method of operation—to pay a substantial profit and provide a living for a whole retinue of people and the wages of the men who were engaged in the operation over a considerable period of years.

After Mr. Gibson and Mr. Klamt had examined the property, they reported that in their opinion it was a property of substantial value, at least to the extent of justifying expenditures by me and Mr. Jones in further exploration and development, with the idea that before we installed a mill we could extract enough crude ore, untreated, to justify shipping it by truck to the rail head and ship it by rail to the smelter and get enough out of that raw ore, unsorted ore, to make a very substantial profit.

Their estimate, and our estimate on the basis of their reports, was that for a cost to us of no more than \$50,000 [50] we could put the mine into operation on that basis. We would have to buy some little equipment—we would have to buy a compressor which would deliver air to the mine faces below; we would have to buy probably one or two ore

(Testimony of John C. Higgins.)

trucks to transport the ore to the rail head; we would have to equip, on a less primitive scale, at least, boarding houses and living quarters for the Mexican miners who would carry on the operation.

Their belief was that we would have our money back out of the grade of ore that was expected to be there, from past operations, and what was then on the dump and what our men could observe in the faces of the mine—we would have our money back within a period of perhaps five or six months.

Q. What was the grade of ore, for instance?

A. That would depend on the level and the various blocks of ore that were apparent in the underground workings that were accessible at that time, and our belief was that the ore which could be sorted and shipped to the smelter would have a value of around \$40 or \$50 a ton.

Q. Did you eventually acquire these mining rights?

A. We did. Juan Robinson owned the mining rights in—well, there is a group of claims—they have a Mexican term for it which I have forgotten. They had a group of claims, one of which was the Tescalama group or claim. That was the claim on which these mining operations had been carried on by Robinson. One was the Ana Esstela. One was the Bueno or the Noche. I [51] think there were two or three more of them in the group he was offering through this man Kroder and Arthur Johnson, who was a mining manager and operator and who was familiar with the property—he was

(Testimony of John C. Higgins.)

offering to sell leases on the property together with such little equipment as there was — there were shovels and picks and jackhammers. Probably the entire value of their mining equipment, so-called, would not amount to \$1,000.00, but he was offering to sell the leases for \$35,000.00, as I remember. I have not refreshed my memory on it.

Q. Will you look at Exhibit 55 and see if that is the agreement by which you finally procured the option or acquired the mining rights in the name of Mr. Harris?

A. They were to be acquired, first, in the name of Mr. Harris who had been in Mexico a good deal, and who spoke Mexican. He was a friend of Mr. Jones and a business associate with him in a dredging operation here.

I have some vague recollection that at that time he either knew Juan Robinson or very quickly went down or had gone down to Mexico at Mr. Jones' suggestion and met Juan Robinson and was able to talk with him in Spanish and to carry on these negotiations, and we thought that until we organized the Mexican corporation, which we at that time expected to carry on the operation there, that during the interim period Mr. Harris, as Trustee, would take over the option from Juan Robinson for the purchase of the claim. I find nothing in this about the purchase [52] price of the claims.

Q. That was the purchase price of the claims, \$35,000.00?

A. That is my recollection. You are more fa-

(Testimony of John C. Higgins.)

miliar with this record than I am because I have not seen any of these documents for years.

Q. There has been some talk about giving a finder's interest to a Mr. Kroder?

A. That is right.

Q. Thirty-three and a third per cent in the first instance and then that was reduced to twenty per cent, ten going to him and ten going to Mr. Johnson?

A. Yes.

Q. Would you briefly explain that point?

A. Well, when Mr. Kroder first came in, he proved to be a rather tough bargainer. A thirty-three and a third per cent interest seemed to me to be a rather preposterous interest for a man who had invested only a very little time in looking at this property and examining it. He was not a mining engineer; he had no claim to professional standing but was really, just as I thought, a mining promoter. But he stood stiff on the proposition and said he would not arrange for a transfer to us of the leases on these properties for less than a one-third-interest.

After discussing the matter with Mr. Jones, who also felt it was a rather high price, we, nevertheless, thought from [53] what we were being told about the property that it might prove to be something like a small bonanza and, if it was, a thirty-three and one-third per cent interest would not seem to be excessive if, in fact, we could bring it into production, and very profitable production, if

(Testimony of John C. Higgins.)

the actual expenditures on our part were no more than approximately \$50,000.00.

So we agreed to accept those terms initially. I had a very important reservation in my mind as to whether or not we would care to extend any money except the money necessary to send a couple of competent men down there to examine the property, on any basis that would give Mr. Kroder thirty-three and one-third per cent of what might result from the operation, and when the report came in and it was not as glowing as Mr. Kroder's description had led us to believe the property would be, we promptly negotiated with Mr. Kroder—promptly negotiated Mr. Kroder down to twenty per cent instead of thirty-three and a third.

Q. That twenty per cent was then divided eventually as outlined in the testimony of Mr. Jones?

A. Yes. Mr. Kroder had explained he had had an association with Mr. Johnson, who was a mining manager, and gave Mr. Johnson's history.

Neither Mr. Jones nor I knew Mr. Johnson at that time. He said Johnson had been of help to him in connection with this and other mining promotions and that he had an agreement with Mr. Johnson by which they were to split fifty-fifty any [54] finder's commission that they got out of these properties.

Q. As has been testified to here, you eventually acquired the Mexican corporation? A. Yes.

Q. Tell the Court whether you had these mining

(Testimony of John C. Higgins.)

rights before you acquired this Mexican corporation?

A. Oh, yes, a considerable time before. I told Mr. Jones, when he came in with this proposition, and Mr. Kroder also, that personally I would not undertake an operation in Mexico except under very competent Mexican legal advice, and shortly after—I don't remember how long after—we had a report from Klamt and Gibson as to their opinion about the property, suggesting that they thought it amply justified initial expenditures on our part to put it into operation or at least \$50,000.00, with the prospect of our getting that money back very quickly out of bonanza ore. I got the recommendation—it perhaps came from Mr. Harris,—I am not sure,—or it came from Mr. Johnson—as to a Mexican lawyer, qualified to practice both in the United States and in Mexico, by the name of Malcolm Little, at Nogales, Arizona, right on the border. I have never been in his office, but his office may be on the American side of the line, or perhaps it is on the Mexican side, because most of his practice was in Mexico, and most of it related to mining operations.

I got some outside information as to Mr. Little and the information was favorable as to his reliability and competency [55] and particularly as to his skill in connection with Mexican mining legal matters, and I got in touch with him on the telephone and then in correspondence with him, and my reactions were entirely favorable. He seemed to be an

(Testimony of John C. Higgins.)

intelligent lawyer and knew the answers, as far as Mexican law was concerned, and I asked his advice.

I told him we had planned to organize a Mexican corporation to carry on this operation, because there were other parties than Mr. Jones and myself. If it had not been for this outside participation, Mr. Jones and I would have started as an operating partnership down there.

Mr. Little advised me strongly not to attempt to operate down there as an American partnership and not to attempt to organize a new Mexican corporation and certainly not an American corporation to carry on an operation down there.

He said, "Under present Mexican laws, if you organize an American corporation you probably cannot be qualified to operate down here at all. You would have to organize a Mexican corporation, and if you organize a Mexican corporation the present law would require that fifty-one per cent of the stock be owned by Mexican citizens."

Since we had no Mexican citizens at all in the picture who would put up any money or with whom we wanted to be associated in such an ownership or operation, and since it would be up to Mr. Jones and myself to put up most of the money that would be [56] required, I felt stymied. I said, "What are we going to do in this situation?"

"Well," he said, "it is the practice among Mexican lawyers," and he said, "I am a qualified avocat down there—" or whatever they call them. He said

(Testimony of John C. Higgins.)

it was the practice among lawyers, as far as practical operation was concerned, to preserve in their offices the Mexican corporate structure and he said, "I happen to have such a Mexican corporate structure that is set up as a mining operation which can actively carry on mining exploration and a development program," and which he said had, some years ago, proved to be unsuccessful, but, he added, "I have since that time kept up the annual taxes and fees that have to be paid to keep such a corporate structure alive, and it is alive and a going and qualified corporation," and he said, "It has cost me a substantial sum to keep it alive"——

Mr. Oehmann: If your Honor please, this is all very interesting and educational, but I don't think it proves what happened in 1948. It is encumbering the record with a lot of immaterial testimony.

The Court: Continue in your own way, Mr. Higgins.

A. It seems to me, if your Honor please, it has a great bearing on the issues here.

Mr. Oehmann: I object to Counsel arguing at this point. He is a witness now.

The Witness: I would not be proceeding with this testimony [57] if I did not believe as a lawyer that it has strong bearing upon the contentions involved in the case.

Mr. Oehmann: You realize, too, Mr. Higgins, that it is the Court which decides what evidence is admissible.

The Witness: Of course, I do. I, of course, sub-

(Testimony of John C. Higgins.)

ject myself to the judgment of the Court as to whether I should proceed or not.

Q. (By Mr. Oppenheimer): Just proceed with your narrative.

A. I said, "What would be our situation if we purchased from you, if that is what you propose, this corporate structure?"

He said since that corporation was organized—I think he said in 1932, long before the recent statute was passed which required operating Mexican companies to have at least fifty-one per cent Mexican ownership, "The corporation, if you operate under that name, and purchase the corporate structure and continue it, the corporation will not need to be owned fifty-one per cent or any per cent by Mexican shareholders, and you and your associates, Mr. Jones and others, can, therefore, operate in Mexico free from any such restrictions, and your position before the Mexican courts would be vastly more secure than it would be if you organized a new corporation or if you attempted to operate here as a partnership or as an American corporation."

Q. You eventually acquired this corporate structure that you speak of?

A. Yes. In addition to fees for his advice in the matter, I [58] think we paid Mr. Little \$500.00 for the corporate structure.

Q. Prior to that you had acquired these mining rights? A. Oh, yes.

Q. What became of these mining rights?

A. The mining rights had been acquired in Mr.

(Testimony of John C. Higgins.)

Harris' name as Trustee, and he transferred them to this corporation, the name of which was Mina del Refugio.

Q. State to the Court whether or not those mining rights which were acquired had a substantial or nominal value?

A. They had, in our opinion, a very substantial value, or we would not have expended the substantial amount of money that we did in attempting to develop them and put them into operation.

Q. You were familiar with the eventual sale of the interest of the finders in the stock of Mina del Refugio?

A. Yes. I remember Mr. Jones and I purchased Mr. Johnson's stock, which I think was nine per cent, if I remember correctly, the total corporate stock, for \$4,000.00, when he was in the hospital in Tucson, Arizona, about to die from cancer, and I know Mr. Kroder sold his stock to Mr. Wells and one or two others in New York City for approximately the same amount—\$5,000.00, I think.

Q. That was after these mining rights had been transferred to the Mexican corporation?

A. That is right.

Q. In this original agreement that you have in your hand, Exhibit 57, and I think in the trust agreement, Exhibit 55, in [59] actual practice, the advances made by Jones and yourself were loans to the corporation; the moneys you advanced were represented by promissory notes of the Mexican corporation?

(Testimony of John C. Higgins.)

A. That is not quite fully true, Mr. Oppenheimer. When we bought the corporate structure,—it was a strange practice to me but one which seems to be common in Mexico, from Mr. Little—obviously, the capital stock of the corporation had not been paid up. It was only 5,000 pesos, or approximately \$1,000.00 in American money, and we, of course, would not start operating under a corporate structure or corporate name whose capital stock had not been paid up, so that a thousand dollars of our money was paid to pay up the par value of that corporate stock, and it was put into the company and was not represented by any note or obligation of Mina del Refugio to Mr. Jones and myself.

Q. This \$1,000.00 was in addition to these mining rights that had been transferred from Mr. Harris, as Trustee?

A. Yes, that had nothing to do with the transfer of the mining rights from Harris, except that it was the company from which the rights were transferred.

Q. So there were two separate transfers; namely, the \$1,000.00 plus the mining rights?

A. That is right.

Q. Coming back to my question which was not complete, about subsequent advances made to the corporation, by virtue of these exhibits, would you please outline the circumstances under which [60] notes were to be given by the corporation, the Mex-

(Testimony of John C. Higgins.)

ican corporation, to Jones, Harris and yourself, as and when you advanced money?

A. Well, as the proposition started out, Mr. Harris said his advances to the company would have to be limited to \$3,000.00, because he felt that was all he could invest, even though these properties looked attractive, and it was therefore understood between Mr. Jones and myself and Mr. Harris that we would ourselves provide the necessary moneys to carry on the operations and to start additional exploration of the properties underground, additional development, to find and block out such ore as could be found and to provide necessary equipment, originally just mining equipment and subsequently milling equipment, to mill the ore because it was found within, I would say, a year at least after the operation started, that a mill would be necessary because the cost of trucking raw untreated ore from the mine to the rail head and pay freight on it to the smelter was too great to be borne by the lower-grade areas in the mine, and there were very substantial lower-grade areas where the ore was commercially—where it would be profitable according to the engineers' reports, and we found in the course of operating, if the ores were first treated in a mill at the property and concentrates produced which would have a very high value per ton and which would stand the cost of trucking to the rail head and freight to the smelter, and which could be treated at a lower cost at [61] the smelter. That

(Testimony of John C. Higgins.)

was the basis upon which we subsequently proceeded.

(Recess.)

Q. (By Mr. Oppenheimer): Were advances made by you and Mr. Jones to the corporation, the Mexican corporation, Mina del Refugio?

A. Yes, very substantial advances.

Q. And were these advances represented by any particular document or documents?

A. Well, it was agreed from the very beginning in the written contract that we executed with Kroder and all the way through that our advances to the Mexican corporation to be organized should be represented by notes of the corporation, issued at intervals, notes issued to us from the advances up to date, the notes being repayable, as I remember it, within two years from the date of the notes.

Q. I will ask you to state whether or not it was your intention that those notes should have been paid by the corporation according to their tenor on or prior to their due date?

A. Our expectation was that we would get back our maximum of investment of \$50,000.00 in these preliminary costs within a period of approximately six months. That proved to be a wild dream ultimately, but it was the dream that we were dreaming at the time we first became acquainted with this property and had some information about it.

Q. You did advance substantially more than \$50,000.00, did you? [62]

(Testimony of John C. Higgins.)

A. Eventually we advanced over \$300,000.00.

Q. Those advances were represented by notes?

A. All of them, as nearly as I remember, excepting that there were current cash advances, expenditures paid by Mr. Jones in connection with his various trips to the property, and he went down to the property many times. I went only once in the whole period during which we were connected with it, and that was rather late after the mill had been erected and was in operation——

Q. Will you explain to the Court——

A. May I finish the answer there?

Q. I beg your pardon.

A. So that some of these advances that were made by Mr. Jones and many that I made were not represented by notes. That came under a clause of the agreement, as I remember it, that until notes were executed for advances that we had made the advances were to be regarded as open accounts and they were payable as debts of the corporation and if we were repaid before the note was issued, of course, we did not get a note, also; we merely got repayment of the advances that we were each putting up all the time on the Company's business.

Q. I wish you would develop the background of the reason why notes were issued for these advances.

A. When this first contract was made with Mr. Kroder on July 31, 1944, which is Exhibit 53 in this case, it was agreed that [63] if we decided to go into this proposition we should put up the \$35,000.00 that was the purchase price of the Tescalama group

(Testimony of John C. Higgins.)

of claims owned by one Robinson, and that for that \$35,000.00 we should receive notes that were repayable within two years from their date with interest at five per cent, and then when the subsequent agreements were made, and when it became apparent from further investigation that, in addition to this \$35,000.00, which was not all payable at once—only \$10,000.00 was payable at once; the balance of it was to be paid out of royalties on the ore, with a limitation of three or four years during which annual installments of, I think, \$10,000.00 had to be paid.

In order to make those payments, so that we would thereby be putting in the corporation's ownership the group of mining claims, estimated by us to be worth certainly the purchase price of \$35,000.00, we advanced that in order that the corporation might have that, as you might say, as surplus capital.

We were businessmen enough to realize that this corporation to which we were transferring this option on these claims, and the purchase price which we were making, if the corporation was to operate in Mexico as a Mexican corporation it had to own the mining grounds on which it was operating, and in order that it might own the mining grounds and that it might still retain possession—that we might retain our possession as against Mr. Kroder and Mr. Johnson owning one-fifth of the stock of the corporation, we did not propose to be turning over [64] to Mr. Kroder and to Mr.

(Testimony of John C. Higgins.)

Jones one-fifth of the money that we were investing in this corporation.

Q. You said Mr. Jones. Didn't you mean Mr. Johnson?

A. Mr. Johnson and Mr. Kroder, yes.

Q. Let's stop there for just a minute. In other words, Kroder and Johnson had these finders' interest, which was first thirty-three and a third per cent and later reduced to twenty per cent?

A. That is correct.

Q. As I understand, the cash advances you were making—you did not want them to participate in those cash advances by virtue of their finders' interest in the corporation?

A. Not until after we had been repaid the moneys that we were risking in this venture because it was a venture from the very start. We knew that, and so did they. It was not an investment.

Q. How did that place you in relationship to other creditors of the Mexican corporation?

A. It was equal with any other creditors that there might be. There have never been any other creditors of the corporation, except for very temporary periods for current supplies, such as groceries for the boarding house and powder and other current mining supplies, because Mr. Jones and I advanced—as rapidly as any such obligations of that sort would accumulate, we advanced money to pay for those claims. We advanced money to pay the wages of the miners on the property, and we kept it free and clear of all current obligations to

(Testimony of John C. Higgins.)

other creditors, except things [65] that could not be paid at once. There were taxes that had to be paid at periodic intervals; there were always some obligations held back, but Mr. Jones and I each regarded ourselves in the situation as in a position where we had to pay other creditors in order to continue, of course, this operation, and in order to protect the money which we hoped to get back at some time from the notes of the corporation.

Q. In other words, you and Mr. Jones advanced, as requested, money to pay any claim for labor or whatever else it might be?

A. That is right, and when these operations were wound up there were no other creditors except Mr. Jones and myself. We paid everybody but ourselves.

Q. You stated in your testimony a while ago you expected your advances, which you estimated at best to be \$50,000.00 but which climbed to some \$300,000.00 eventually, to be repaid in a short period of time, and I think you used the words "bonanza ore."

Maybe I misunderstood that, and perhaps the Court is familiar with the term. I wonder if, just for the purpose of the record, you would tell what is meant by "bonanza ore," and whether it has any particular significance?

A. Well, normally it is considered to mean rich shipping ore that won't have to be treated in a mill, and that will pay a very substantial profit over and above mining and transportation and smelter costs,

(Testimony of John C. Higgins.)

and bonanza can run all the way from \$30.00 or \$40.00 a ton to \$300.00 or \$400.00 a ton. I have never been in on any [66] of the \$300.00 or \$400.00 ton bonanza ore.

Mr. Oppenheimer: I think you may cross-examine.

Cross-Examination

By Mr. Oehmann:

Q. It was you who addressed the letter of December 27, 1948, Exhibit 75, to Mr. Klamt, was it not, in which you enclosed the contract he was to sign covering the manner in which he was to dismantle the property?

A. I signed it, and I usually compose any letters I sign.

Q. Then you composed Paragraph 3 which reads:

“By December 31, 1948, if posible, or as soon thereafter as it can be accomplished, you are to pay from the Company’s funds on hand, or in bank, all of the Company’s outstanding accounts, pay rolls and liabilities, and you are to transmit to the Valley National Bank the full balance of any funds then on hand in Hermosillo for deposit in the account of Mina del Refugio, S. A., except that you retain, as a revolving fund, in the bank at Hermosillo, a balance of 5,000 pesos, or its equivalent in United States currency.”

You recall that?

(Testimony of John C. Higgins.)

A. Yes, very clearly.

Q. You recall, too, that he was to dismantle the property and sell it, subject to approval by you and Mr. Jones in certain [67] cases where the costs exceeded \$500.00?

A. That is correct.

Q. And send to you the first \$20,000.00 received for such sale, and retain the balance?

A. That is correct.

Q. You also recall at the Board of Directors' meeting a resolution was adopted to the effect that all prior liabilities be satisfied and then this \$20,000.00—I think it was estimated it might be \$22,500.00 before it was finally wound up—be distributed to the note holders?

A. That is correct.

Q. There were creditors, then, who took precedence, or who were prior to you note holders?

A. No, there were no creditors prior to the note holders, with these exceptions. Of course, under Mexican laws, current pay rolls, just like under our laws here, were prior charges against the Company's assets, and we had no idea of running out from under the Mexican laws and attempting to extract any money from this company or its properties without meeting all requirements of the Mexican laws. In addition, there were always taxes of various sorts that accrued during the operation and which should be paid from the Company's assets, so that as far as prior claims of that sort are concerned, of course, there were prior claims, but no claims as general creditors of the Company. Let's

(Testimony of John C. Higgins.)

say anyone that provided supplies for the Company or provided powder for [68] the Company, or provided supplies for the Company's ordinary operations or sold equipment to the Company, they were on a parity with us. We were creditors just like they were and on the same basis.

However, I told you we did see that every claim of that sort was paid so that when this corporation ceased its operations in Mexico there wasn't a creditor besides ourselves.

Q. Let me ask you this: You recall Mr. Jones identified Exhibit 64, which is a letter to Mr. Wells in New York, dated May 16, 1946, in which Mr. Jones indicated that "it would cost \$500,000.00 for our interest."

Do you recall there being testimony to that effect that at that time he considered your interest?

A. What was the date of that letter?

Q. May 16, 1946.

A. Yes. I recall the letter, and at that time we thought the property was worth that much. We would not have sold it for less.

Q. At that time you had invested, you and Mr. Jones, something like over \$100,000.00?

A. I think a good deal more than \$100,000.00 at that time.

Q. Mr. Jones—and I assume you are familiar with the fact that he knew about it—testified they had blocked out sections of ore, or there was ore blocked out, which had been valued at \$409,000.00?

A. \$409,000.00; I think that is correct, yes.

(Testimony of John C. Higgins.)

Q. So, then, we read the next to the last paragraph of this letter, Exhibit 64: "This figure mentioned may seem very large, but the ore that we have blocked out, together with our present investment, does not make it look so exorbitant."

Doesn't that mean that the \$500,000.00 which you and Mr. Jones considered your investment to be worth at that time consisted of the cash advanced plus \$409,000.00 in the way of ore discovered and tested and ready for exploitation?

A. Yes, but you should understand this, that that \$409,000.00 of blocked-out ore does not mean that is all profit—does not mean that your profit after mining and milling and smelting of that ore is going to be \$409,000.00. That was the gross value of that ore, and it would have to be valued on the basis of a probable margin of profit.

In addition to that there was in the property at that time, according to the reports from our engineers, other very substantial blocks of unexplored ore which could practically be projected certain distances beyond the faces of the workings, so the ore value in the property was by no means at that time defined as \$409,000.00 and no more.

But I, at least, had in mind at that time in assenting to an offer of that sort to Mr. Wells, that the property would go to Mr. Wells or his associates or whoever might be willing to purchase it under those circumstances, free and clear of the [70] payment of these loans by Mr. Jones and myself, and our profit, under those circumstances, would not, of

(Testimony of John C. Higgins.)

course, have been \$500,000.00. It would have been the difference between what we had advanced and what was owed to us from the Company and \$500,000.00.

Q. Do you recall, in March, 1946,—March 25, 1946, to be exact,—when you wrote the letter identified as Exhibit 63 to Mr. Johnson, referring to his illness—

A. Yes.

Q. And expressing your regret—

A. Yes.

Q. —acknowledging receipt of an executed copy of his assignment of his stock or his interest in the corporation, in which you also told him he had the right to repurchase it within a year, I think it was?

A. That is right.

Q. Personally?

A. Yes.

Q. Limited to him alone?

A. Yes.

Q. You paid \$400,000.00 for that, did you not?

A. Yes, that is my recollection.

Q. But it was after you and Mr. Jones had invested considerably over \$100,000.00?

A. Well, my recollection of our investment at that time would [71] be—yes, very much over \$100,000.00. In purchasing this stock from him for \$4,000.00, we considered that it was worth that and he was the man who made the offer to sell it for \$4,000.00. We thought it was worth certainly that much, subject to these debts of the corporation.

Q. The same thing was true of the other stock you acquired, was it not? Did you acquire the Kroder interest, too?

(Testimony of John C. Higgins.)

A. No, that was sold to Mr. Wells and some relatives or friends of his in New York City. No, we did not purchase that.

Q. But Mr. Wells indicated in this Exhibit 60 that he agreed to pay \$5,000.00 for it?

A. That was our understanding as to what he paid for it, yes.

Q. That was in April, 1945. You indicated that you expected a maximum investment of \$50,000.00 would carry the Company through, what was it, the first six months? A. The first six months.

Q. The time necessary to produce ore in profitable quantities?

A. Yes. Our expectation was that during that first six months the Company would, from shipping ore, make enough to repay our \$50,000.00 and provide any additional money that was necessary for further development of the property and equipment of the property with a mill so that we could keep on shipping and that we would not be required to build a mill or make any advances beyond the first \$50,000.00, \$10,000.00 of which would go to the payment of the first installment on the lease, option of purchase, and the [72] balance of which would go into the mining operations for the production of ore.

Q. But the balance was to come from royalties?

A. The balance was to come from royalties with the provision that we felt the further balance of \$25,000.00 must be paid within a period of three or

(Testimony of John C. Higgins.)

four years after that, which meant that if it did not come from royalties we had to pay it anyway.

Q. If you expected a profitable return in six months, you did not expect to have to pay that balance out of your own pockets?

A. No, we did not expect to pay that balance out of our own pockets or anything further than our first \$50,000.00.

Q. Then you discovered you would have to increase your investment? A. Yes, we did.

Q. You increased it to the extent finally of about \$150,000.00?

A. My investment in mining equipment, which I furnished and shipped to this property from other operations,—my investment ran to approximately \$165,000.00, but I did not take notes from the corporation for the mining equipment, I think more or less just because of carelessness on my part, although under the terms of the contract I was protected, because it required that the company would repay the reasonable value of the mining equipment, just as though they had issued notes for it.

Q. How much in notes did you have at the time of the abandonment?

A. I would have to look at the record for that. I haven't seen [73] the records for years.

Q. Could it be approximately \$150,000.00?

A. I would suppose so. That is my recollection.

Q. What did you do with your notes?

A. I kept them until I sold all of my mining

(Testimony of John C. Higgins.)

operations in the year 1948, in December of 1948, to a group of men in Spokane. At that time I was carrying on active dredging operations, with one dredge operating in Montana and a dredge operated and a mill operated producing tungsten concentrates and one dredge operating in Idaho, and I sold all of them to this group in Spokane.

I should say, so that you may understand clearly what the situation is, that on the 1st of October, 1948, instead of carrying on all my various mining investments and operations as an individual I organized a corporation called the H & H Mines, Inc., an Oregon corporation, with a capitalization of, as I remember, \$300,000.00 in par value. I transferred the Montana dredging operation and mill there and the Idaho dredging operation, with the camp buildings and other equipment and the Mina del Refugio notes and my claim against Mina del Refugio for the purchase price of the mining equipment that I had shipped down there, which belonged to me, to this corporation. The doctors advised me that I must quit working so hard or I would kill myself, so I was anticipating an early death at that time if I did not quit working so hard and did not quit attempting to manage [74] so many different operations, and I set up this corporation and transferred all of my mining assets to the corporation.

Q. I hope that anticipation of early death has been as wrong as your expectation of a profit in this mining corporation.

A. At any rate, it is two years or two and a half

(Testimony of John C. Higgins.)

years since that time and I am still here, but I have not been working as hard in the last few years as I did before.

Q. Did you own the H & H Corporation, Mr. Higgins?

A. I owned it a hundred per cent, yes; that is, when I incorporated it on October 1, 1948, I owned all the assets. They were transferred to it in payment of its corporate stock.

Prior to that time I had operated under the name of H & H Mines, not incorporated, but as the H & H Mines, for a period of at least ten years. During part of that time I was not here personally. The operations were managed by Mr. G. S. Hinsdale, who initially took a 10 per cent interest in the partnership enterprise known as H & H Mines, but he shortly regretted his purchase of a 10 per cent interest for a very small amount of money, because it was in the early days of the operation, and he wanted his money back, and I gave him his money back and continued to operate as H & H Mines, the name which was adopted for the partnership, and on all my books, papers and my contracts the name is John C. Higgins, doing business as H & H Mines, until the incorporation, until we incorporated in October, 1948. [75]

Q. After the incorporation in 1948, when did you transfer your Mina del Refugio notes?

A. I think immediately. That is my recollection. I would say on the 1st of October, 1948.

(Testimony of John C. Higgins.)

Q. Is that company on an annual basis for reporting, do you know?

A. Well, it is owned by mining operators in Spokane. They have been carrying on dredging operations ever since.

Q. No. I am asking you about the H & H Mines, the corporation which you say you owned in 1948.

A. Yes. I don't remember as to whether or not we started the fiscal year from October 1, 1948, until September 30, 1949, or whether we made returns on the basis of the fractional year; I did not make the return because by the time the return time came, even if it was for the fractional year or the three-months' period, that return was made by the people in Spokane. I sent the books up to them and they made whatever return their counsel advised them to make.

Q. Do you recall whether or not that company, that corporation, claimed that they had a bad debt deduction for these Mina del Refugio notes?

A. Certainly it did not.

Q. Do you know that to be a fact?

A. Yes, I am sure of that.

Q. Do you know that is what the returns reflected? [76]

A. No, but I know that there would be no basis for such a claim.

Q. You are assuming that, aren't you?

A. Well, yes.

Q. You do not know it to be a fact? You are assuming that they did not claim a loss, aren't you?

(Testimony of John C. Higgins.)

A. From my conversations with them and their counsel, I know that they would not attempt to claim that was a loss.

Q. What is the basis for that knowledge?

A. What is it?

Q. What is the basis for that knowledge?

A. Because during long negotiations with them I explained what the situation of the Mina del Refugio was.

Q. When did you have those negotiations?

A. In December of 1948. That was after we had decided to dismantle in Mexico and had ourselves abandoned this as a going operation, and I would not sell to anyone, an individual or any other, and tell them that was a good operation or a doubtful one. I told them I thought they would get approximately \$10,000.00 from this salvage operation from the selling of the equipment down there, and they did get something over \$10,000.00 as their share.

They had no expectation or belief that what they were getting from me or this corporation, H & H Mines, Incorporated, was worth more than what would be produced by the salvage operation, selling the equipment down in Mexico. When the matter was [77] finally closed, I showed them the contract with Mr. Klamt, so that they knew what to expect from this operation. They could not claim it as a loss, under the remotest possible circumstances, in my opinion as a lawyer. I am not a tax lawyer, though.

(Testimony of John C. Higgins.)

Q. When did you dispose of your interest in H & H Mines, Incorporated?

A. I think the closing of the sale was in the latter part—I know it was in the latter part of December. I don't remember the exact date. I would say the 20th or 21st or 23rd, somewhere along there, about a week before the end of the year.

Q. In any event, you would not have gotten anything from the dismantling of the mining equipment?

A. Personally, no, because I had sold my notes and my claims against the Mina del Refugio, transferred them to H & H Mines, and then I had sold all my stock in H & H Mines to the group in Spokane.

Q. Yes.

A. I am not in any way interested in this controversy in the remotest degree, that I can see.

Q. The property wasn't dismantled and sold until 1948, was it?

A. He began the dismantling, as I recall it, about the 1st of December, 1948, began trucking the dismantled equipment,—that is, the operation of trucking the dismantled the equipment, over impossible roads, more than a hundred miles from the mine to Hermosillo and our corral, consuming a period of several months, [78] as I remember.

Q. You did not authorize him to make any sales until December 27th, that December 27th letter?

A. I think we had a verbal arrangement that if he found any purchasers for any of the equipment

(Testimony of John C. Higgins.)

or, rather, if he could sell small items of equipment, that he was free to go ahead and do it, checking with us before he did so, unless the amounts were very small.

I think the written agreement represented, in substance, as far as the selling of the equipment is concerned, just what was finally included in the letter, the formal letter which I wrote to him in the latter part of December.

Q. For your information, this letter, which is a part of Exhibit 75, starts out with:

“This will confirm the agreement Jones and I, as officers and directors of Mina del Refugio, S. A., made with you over the telephone today concerning the dismantling of the mill.”

A. Yes.

Q. That was written December 27, 1948.

A. This agreement covers more ground than our verbal arrangement with him that he could go ahead and sell some supplies or equipment, by reason of the fact that we had not made a written arrangement with him. Up to the time of this agreement he was not operating on any arrangement by which he would go over a [79] certain figure. We had an idea up to that time that the equipment might produce quite a good deal more than what was finally written into this agreement.

We had come to the conclusion that his attempts to locate purchasers for various pieces of equipment were moving pretty slowly and the expenses of the salvage operation and the trucking operation would

(Testimony of John C. Higgins.)

be so heavy that by the time he had paid them out of the proceeds of the property there would not be anything more than about \$20,000.00 in salvage value left, except probably enough to pay his salary during the period that he was carrying on this operation. He was much more optimistic and thought he could sell it for substantially more, which would give him some real compensation, if he stayed down in Mexico and attempted to carry on the salvage operation.

Q. This money you had put into the mine was a risk venture, wasn't it?

A. Oh, of course. All mining ventures in that stage are risk ventures. There is no doubt about it.

Q. It is the type of investment which pays a high return if it is successful?

A. It is not an investment, sir. It is not an investment at all. You are just gambling your money.

Q. Do you gamble your money without any expectation of return?

A. No. I expected after what we had heard about this property it was worth paying the costs of an examination. After the [80] examination had been made by our representatives, I thought it was worth the additional gamble of \$10,000.00 to pay the first installment on the mining option and thirty or forty or fifty thousand dollars more to get it into operation, so that we could ship some of this high-grade ore.

Q. But it had to be gotten into operation first?

(Testimony of John C. Higgins.)

A. Oh, of course, somebody had to do it, and there didn't seem to be anybody around willing to risk his money to that extent, except Mr. Jones and myself and Mr. Harris, who was willing to risk a few thousand dollars.

Mr. Oehmann: I believe that is all.

Redirect Examination

By Mr. Oppenheimer:

Q. Mr. Oehmann spoke to you about Exhibit 75, dated December 27, 1948. I call your attention to Exhibit 74, a telegram under date of November 15, 1948, and ask you whether or not——

A. I will get it. Maybe this is against the Court's procedure. I am sorry. I will keep my place on the witness chair.

Mr. Oppenheimer: You can charge that to me, your Honor.

A. Yes. This does refresh my recollection, that in the middle of December when Jones and I—or, rather, the middle of November, 1948, when Jones and I had jointly decided that this thing should be wound up, that our efforts to sell the mill in place and sell the mining claims themselves would be fruitless [81] and that it would not justify our continuing to keep the equipment—to keep a crew at the mine and keep the claims there in the expectation that we might sell. We decided to dismantle the mill and have all parts trucked into Hermosillo, and suggested that he bring certain portions of the

(Testimony of John C. Higgins.)

equipment in first and advertise the quantities and sizes and so forth in the Hermosillo paper, and telegraph offers to us in Portland for confirmation.

That was before we attempted to make any agreement with him under which he would carry on the liquidation operations and participate in the proceeds over and above the amount to come back to us.

Q. One final question: These advances made by you and Mr. Jones, represented by notes or by open accounts, you expected those to be repaid to you like any other creditor of the corporation?

A. Yes. The whole plan of advances to the corporation was set up under the advice of Mr. Little, the Mexican counsel, who told us, when in discussion with him, after he had advised us to purchase the corporate structure of Mina del Refugio and carry on this operation under that corporate organization—when I suggested, well, 5,000 pesos or \$1,000.00 seems adequate capital. Of course, it would take a great deal more money than that. Why not file amended articles of incorporation, with increased capital stock?"

He said, "I advise you not to tamper with this corporate [82] structure in that way, because we are still uncertain of what might happen here in Mexico as to the use of these old corporate structures when the courts come to interpret the recent statute which requires that such operations be fifty-one per cent owned at least by Mexican citizens. Leave this structure as it is and provide your

(Testimony of John C. Higgins.)

money to the corporation by loans to the corporation. You will then be in the position of creditors and you won't find yourselves in a situation here, after putting in a substantial investment in the situation, in the unfortunate position of a great many American mining and oil men in the '30s, when the Communists moved in and took over a great many mining operations just under the claim that they were organized as local labor authorities, and they just shoved the owners of the property out."

I happened to be one of those owners at that time. I had property in Chihuahua. The crew just walked in one morning and said to my superintendent, "You are out. We are going to run this property from now on," under such-and-such a decree, I think of the local mayor or local city council or something of the sort.

Q. And you were out?

A. I was out, and I left my equipment there and I never went back—never undertook another mining operation in Mexico until this came along. This looked good enough to justify the risk of such an operation. [83]

Q. One other thing: I understood you to testify as to why you made these loans that you did not want the finders to participate in the cash you and Jones had advanced.

A. That is correct. Mr. Little advised us, when I suggested at that time that perhaps we could handle that by amending these articles of incor-

(Testimony of John C. Higgins.)

poration and providing for preferred stock, he said, "No, that is not good business down here. You keep your investment in this venture in the form of loans to this corporation which you have vested with the ownership of these mining claims. You have really already contributed to its capital what is probably worth a good deal more than \$40,000 or \$50,000, if your reports on these claims are true, so don't risk any more money in that way. You get your money back. Keep yourselves in the position of aliens, as citizens of the United States, in the position of creditors, not of stockholders in a Mexican corporation for a large amount of money, because I can't advise you," he said, "what will happen to you if we have another feverish period such as we had in the '30s down here."

Mr. Oppenheimer: I think that is all.

Recross-Examination

By Mr. Oehmann:

Q. Then you recognized the \$1,000 you paid in, or the 5,000 pesos, was inadequate capital, didn't you, Mr. Higgins? [84]

A. It was inadequate in the sense that it was not anything like as much money as this company would require to operate, and it was obvious that the company would have to raise money in some other way, by loans or otherwise.

Q. Your first reaction was to issue more stock?

A. To issue more stock, but when he explained

(Testimony of John C. Higgins.)

the dangers of such operation, under the then current situation under Mexican law, and advised us to put in the money by loans and notes, I accepted his advice and thought it was good advice.

Q. He told you to keep your investment in the form of loans?

A. He told us to keep the obligations or the money that we put up in the form of loans, yes; if you want to call it an investment, I invested in the notes of this corporation on the faith of the option which it then owned for the purchase of these valuable mining claims. We thought we would get our money back out of that.

Q. Let me ask you this: You heard Mr. Jones' testimony as to the agreement that ten per cent of the stock would go to Johnson, ten per cent to Kroder and the remaining eighty per cent would be divided between you and Mr. Jones?

A. Mr. Jones, myself and Mr. Harris.

Q. And Mr. Harris? A. Yes.

Q. On the basis of the investment and contributions you made towards the operating expenses, the purchase of equipment and [85] the operation of this mine? A. That is correct.

Q. Through the years involved that is just what happened, is it not? Didn't you make contributions in ratio to your capital stock holdings?

A. No, not at all. Ultimately we were to get, as our share of the capital stock, such portion of the capital stock as represented the proportion of these loans that were made by Jones, Higgins and Harris.

(Testimony of John C. Higgins.)

Q. Yes. You did contribute just as much as did Mr. Jones? A. More.

Q. Substantially?

A. More; not much more, but some more, if you want to be accurate.

Q. In other words, you contributed about \$168,000 and, he, about \$155,000, in round numbers?

A. I think those are the round figures.

Q. Your stock percentage was just about the same, wasn't it, thirty-nine per cent?

A. Well, no, I think there was some difference in our numbers of shares of stock.

Q. All right. What was the difference?

A. I don't remember. I haven't seen these files. I can't tell you what the difference was.

Q. You recall all these other provisions of this agreement, don't [86] you?

A. No, I don't. There are many of them that I do not recall at all. If you will refresh my memory as to what the proportion of stock was, I can tell you whether or not we carried out our arrangement.

Q. Don't you recall the agreement whereby you were to——

A. Do you want to develop I did not get as much stock as my proportion of the loans provided for? If you do, if that is the point, I could concede it on that basis, subject to check with the record.

Mr. Oehmann: I move that be stricken, your Honor.

Q. I invite your attention to Exhibit 59, Mr. Higgins, and to Paragraph 4:

(Testimony of John C. Higgins.)

“It has been agreed by and between the parties hereto”——

A. What is the exhibit and what is the date of it?

Q. Exhibit 59, dated March, 1945, entitled “Agreement,” signed by Clayton R. Jones, John C. Higgins and the three Harrises. A. Yes.

Q. It was identified both by you and Mr. Jones. Read Paragraph 4. I will read that paragraph:

“It has been agreed by and between the parties hereto that ten per cent of the stock of the aforesaid corporation shall be issued to Arthur E. Johnson, or his assigns, ten per cent to Daniel D. Kroder, or his [87] assigns, and the remaining eighty per cent of the stock of said corporation shall be divided between Clayton R. Jones, John C. Higgins and the above-named members of the Harris family, in proportion to their respective contributions in cash and in equipment, at its reasonable value, and that such stock shall be so distributed when the total of such contributions, as finally made, has been determined.”

A. Yes. That was not finally made and determined until after 1948, as a matter of fact.

Q. As a matter of fact, you did carry out the spirit of this agreement in that each of you held substantially the same interest in this corporation from 1944 to 1948?

A. I don't remember what the situation was dur-

(Testimony of John C. Higgins.)

ing that time except that in these Mexican corporations their stock frequently is "bearer" stock. All the stock of this corporation originally, I think, and even after we came in, was issued as "bearer" stock. They had to hold stockholders' meetings down in Mexico and, in order to qualify at all down there, since Jones and I did not go down to vote as stockholders, I think we followed the practice of leaving "bearer" certificates in the possession of Mr. Little, our attorney down there, and so we did not, until some later period, according to my recollection, attempt to make any distribution of the stock amongst ourselves, in the sense of taking physical possession of the "bearer" certificates. That is an offhand [88] recollection of the transaction, a transaction that has a great many details.

Q. If I told you that according to the records that are here in evidence you held 2,256 shares and Mr. Jones held 2,156 shares, would that be about right? A. I held what?

Q. 2,256. A. Yes.

Q. And he held 2,156?

A. Well, I would suppose that might represent the proportion of my advances to the Company and my notes, as compared with his, but I have no offhand recollection.

Q. It represents your stock ownership?

A. Well, it was the agreement we should have stock in proportion to the advances we made.

Mr. Oehmann: That is all.

(Testimony of John C. Higgins.)

Redirect Examination

By Mr. Oppenheimer:

Q. Isn't it a fact you purchased a lot more machinery and equipment in addition——

The Court: That has all been covered, Mr. Oppenheimer. Are you through with him now?

Mr. Oppenheimer: I am through, yes.

The Court: I will sit longer if necessary. [89]

Mr. Oppenheimer: We have one more witness whose testimony will be cumulative. I don't know how the Court feels about it, if the Court wants to hear this by another witness that I can call.

The Court: The Government has its case to put on. We will resume at 10:00 in the morning.

(Thereupon an adjournment was taken until 10:00 o'clock a.m., Wednesday, May 16, [90] 1951.)

Wednesday, May 16, 1951—10:00 o'Clock A.M.

Mr. Oppenheimer: If the Court please, we were going to call one more short witness, Mr. Denny Harris, but his testimony would be cumulative and we have decided not to take up the time of the Court on cumulative matters, so the plaintiff now rests.

Mr. Oehmann: We move for judgment at this time, your Honor, on the ground that not only does the plaintiff's proof fail to show that this was a debt which became worthless in 1948, but it affirma-

tively shows that these advances were in the nature of an investment, deductible if at all under the capital loss provisions of the statute.

The Court: Decision will be reserved.

Defendant's Testimony

CHARLES E. KIMBERLEY

was thereupon produced as a witness on behalf of Defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Oehmann:

Q. State your full name, please?

A. Charles E. Kimberley.

Q. Are you attached to the Bureau of Internal Revenue? [91]

A. As an Internal Revenue Agent, yes.

Q. Here in Portland? A. Yes, sir.

Q. How long have you been with the Bureau?

A. About twenty-eight years.

Q. Did you participate in the investigation of this case? A. I did.

Q. To what extent?

A. I made an examination of the returns for 1946, 1947 and 1948 of W. J. Jones & Son, Inc.

Q. You are familiar with the 1948 return which claimed a bad debt deduction of \$134,555.21?

A. Yes, sir.

Q. And which reflected a total net operating loss of \$138,379.48?

(Testimony of Charles E. Kimberley.)

A. I don't recall the exact amount of the net operating loss, but I believe there was a net operating loss.

Q. In your investigation and reports made in connection with the case, did you recommend the disallowance of the claim for bad debt deduction of \$134,555.21? A. Yes.

Q. Did you also make an adjustment which consisted of reducing the taxpayer's taxable income for the accrued interest the taxpayer had reported?

A. Yes. The interest which had been accrued on the books of the taxpayer for 1946, after the notes were taken over, that is, [92] by W. J. Jones & Son, Inc.—after they had taken over these notes—amounted to about \$2300 which they had included in income in the return for 1946.

Q. Was there also accrued interest included in the return for 1947?

A. Yes, about \$7,300 for 1947.

Q. How about 1948?

A. And \$7,300 for 1948 included in income for those years in the returns as filed.

Q. In connection with your disallowance of the bad debt deduction, did you make an adjustment for those income items?

A. Yes. Those interest income items which had been reported as income in the returns for each of those years were eliminated from the income in my report.

Q. As a result of the investigation and of these adjustments and other adjustments which are not

(Testimony of Charles E. Kimberley.)

in issue here, if this bad debt deduction is disallowed what will be the result as to 1946?

A. 1946 would show an overassessment of some \$6,000, I believe, without that bad debt deduction and without those interest items.

Q. What would be the result as to 1947?

A. 1947 would show about a \$1,800 refund or overassessment, rather, because of the interest adjustment for that year.

Q. In other words, if this bad debt deduction is disallowed, there will still be a refund of about \$6,400 for 1946 and about \$1,800 for 1947, based in part upon your deducting these income [93] items?

A. Yes, that is correct. There were a few other minor adjustments, but those were the main ones, I believe.

Mr. Oehmann: I think that is all.

Cross-Examination

By Mr. Oppenheimer:

Q. Maybe you can tell me this: When did you propose the disallowance of this so-called bad debt?

A. That adjustment was made in my report for the year 1948. The exact date of these reports I do not recall.

Q. But it was in 1948?

A. It was in the 1948 report.

Q. And at that time you then suggested an adjustment for the corporation by reason of the accrued interest on which it had paid tax on income by

(Testimony of Charles E. Kimberley.)

virtue of these notes, for the years 1946, 1947 and 1948?

A. The 1946 and 1948 reports, I believe, are one report; they are dated the same.

Q. That may be. In other words, until you made the recommendation to disallow this so-called bad debt that is in litigation here, W. J. Jones & Son, Inc., had reported this accrued interest on the notes that it had acquired from Clayton R. Jones, and the Government was agreeable to accepting that as income of W. J. Jones & Son, Inc.? [94]

A. Well, that interest was included in the returns filed.

Q. Yes. A. Yes.

Q. In other words, you were trying to be consistent in rejecting the bad debt by being good to them, by giving them a refund on account of the accrued interest?

Mr. Oehmann: I object to that as argumentative.

The Court: Frame your question differently.

Q. (By Mr. Oppenheimer): In other words, you could not reject the bad debt in 1948 and at the same time accept income from W. J. Jones & Son, Inc., on accrued interest on the notes in question?

A. I consider the adjustment consistent with other adjustments made in the report.

Mr. Oppenheimer: Just read the question, please.

The Court: No, I understand it.

Mr. Oppenheimer: You understand it? Well, that is all, then.

(Testimony of Charles E. Kimberley.)

Q. Was your recommendation based solely upon the books of W. J. Jones & Son, Inc., for the rejection of this so-called bad debt?

A. It was based on all available information that I was able to obtain in the case.

Q. That is pretty nebulous. I understand you on your direct examination to say you examined the books of W. J. Jones & Son, Inc., and therefore recommended rejection of this particular item. I am now asking you whether or not that recommendation is [95] based solely upon an investigation of the books of W. J. Jones & Son, Inc.?

A. I think there was other outside information that I had in addition to what I obtained from the books of W. J. Jones & Son.

Q. You hesitated somewhat in your answer, because I think you want to be fair about it. Do you have any independent recollection at this time of any information outside of the books of W. J. Jones & Son, Inc.?

A. I think I got some information in connection with the Mina del Refugio, probably.

Q. Your recollection is not very clear on that, is it?

A. I am quite certain I did get some information on Mina del Refugio.

Q. Did you make any record of that information?

A. Yes, I think there is some mention in my report, my Revenue Agent's Report.

Q. I mean other than your comments in your report.

(Testimony of Charles E. Kimberley.)

A. Well, other than as stated in my report, I do not think there will be any record unless it would be in my working papers possibly, or somewhere. I put the essential information that I obtained in my report.

The Court: Is the report in evidence?

Mr. Oehmann: Not yet, your Honor.

The Court: Are you going to put it in?

Mr. Oehmann: I want to ask permission for him to refresh [96] his recollection from it.

The Court: All right.

Q. (By Mr. Oppenheimer): Did you find anything on the books of W. J. Jones & Son, Inc., the corporation, that would indicate that these notes were anything other than debts?

A. I inspected the notes at the time I was there.

Mr. Oppenheimer: I don't think you heard the question.

(Question read.)

A. No, I don't believe there was anything in the books of W. J. Jones & Son that would indicate anything.

Mr. Oppenheimer: I think that is all.

Redirect Examination

By Mr. Oehmann:

Q. Did you discuss the case with Mr. Higgins, who was here yesterday?

A. Yes. I talked to Mr. Higgins about the Mina del Refugio corporation.

(Testimony of Charles E. Kimberley.)

Q. Did you talk to Mr. Smith, the secretary of the plaintiff corporation?

A. Yes, I talked to Mr. Smith. He was at the office of the company and I talked to him while I was there.

Q. As a part of your investigation?

A. Yes.

Q. In connection with this case? [97]

A. Yes.

Q. Did you prepare the report, or do you have in your files the report which you prepared for 1946 and 1948?

A. Yes. I prepared a Revenue Agent's report for 1946 and 1948, dated January, 1950.

Q. Would it refresh your recollection if you could read that report as to whom you talked to and what information you developed, other than from what was in the books?

A. I have the report here. Yes, I could refer to it.

Mr. Oehmann: Do you object to it?

Mr. Oppenheimer: Is this an exhibit?

Mr. Kinsey: Is that an exhibit, Mr. Oehmann?

Mr. Oehmann: I ask that the witness be permitted to refresh his recollection from this report, in view of his statement on cross-examination, brought out by counsel, that this was hazy.

The Court: There will be no difficulty about it. It will be granted. Besides, I want to see the report. I want it put in evidence.

Q. (By Mr. Oehmann): Will you consult your

(Testimony of Charles E. Kimberley.)

report and see whether you discussed this matter or whether you did anything but look at the books?

A. Yes. I have some information in the report about the—the report contains an explanation on Page 8 stating the reasons that the \$134,555.21 deduction in 1948, the 1948 return, was not allowed in the report. On Page 8 there is an explanation as to [98] why the deduction was not allowed.

Q. Do you remember that you talked to Mr. Smith and Mr. Higgins?

A. I recall talking to them.

Mr. Oehmann: I think that is all. I want to offer this report at this time.

Mr. Oppenheimer: No further questions.

Mr. Oehmann: Does your Honor want this report?

The Court: Yes.

Q. (By Mr. Oehmann): Do you have a copy there?

A. This is a manuscript report from the office. Have you a copy of that, or do you want to use the manuscript?

Mr. Oehmann: I will have the copy marked with the next exhibit number, if that is satisfactory.

The Court: Yes. I would like to read it now.

(Copy of Internal Revenue Agent's Report, 1948, produced by the witness, was thereupon marked Defendant's Exhibit No. 80.)

The Court: I believe that is all, Mr. Kimberley.

(Witness excused.)

Mr. Oehmann: The Government rests, your Honor.

(Defendant's testimony closed.)

The Court: Do you want to put in any rebuttal?

Mr. Oppenheimer: No, your Honor, there will be no rebuttal. [99]

The Court: Have you seen this report which has just been admitted in evidence?

Mr. Oppenheimer: No. We have never seen it, your Honor.

The Court: It is addressed to the taxpayer, W. J. Jones & Son, Inc., 617 Board of Trade Building, Portland 4, Oregon, written from Seattle 1, Washington.

Mr. Oppenheimer: Then it must be in evidence.

The Court: It starts out with "Gentlemen: I enclose a copy of the report of the examination of your income tax returns for the years 1946-1948"—

Mr. Oppenheimer: I think part of this must be in evidence, your Honor.

The Court: Suppose you check that.

Mr. Oehmann: That includes, of course, the confidential part of the Agent's report which is never sent to the taxpayer. It is the report from which he refreshed his recollection.

The Court: Before you close your case, we had better recess and give you an opportunity to read it over and then see if you want to offer any rebuttal in respect to this exhibit. I would not feel right unless that came into the case.

(Recess.) [100]

CHARLES E. KIMBERLEY

having been previously duly sworn, resumed the stand and further testified as follows:

Further Cross-Examination

By Mr. Oppenheimer:

Q. Mr. Kimberley, what has been referred to as your report, Exhibit 80, has been offered in evidence. I have looked at it rather hurriedly.

I will ask you to tell the Court whether or not you took into consideration in making up your report, the fact that there was assigned to the Mina del Refugio corporation mining rights which had been acquired in the name of D. E. Harris under the trust agreement, which is Exhibit 55, and which were finally assigned to the Mexican corporation, as indicated by Exhibit 56?

A. I don't believe I knew at the time about that.

Mr. Oppenheimer: I think that is all. Thank you.

(Witness excused.)

The Court: Is there any rebuttal?

Mr. Oppenheimer: No, your Honor, no rebuttal.

(Oral argument of counsel.) [101]

Reporter's Certificate

I, Ira G. Holcomb, an Official Reporter of the above-entitled Court, do hereby certify that on May 15 and 16, 1951, I reported in shorthand the proceedings had in the above-entitled matters, that I

thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of pages numbered 1 to 101, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me in shorthand on said dates, as aforesaid, and of the whole thereof.

Dated this 29th day of May, 1951.

/s/ IRA G. HOLCOMB,
Official Reporter.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 6

Form 843

Treasury Department

Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp (Date received) : Blank.

State of Oregon,
County of Multnomah—ss.

Name of taxpayer or purchaser of stamps: W. J.
Jones & Son, Inc.

Business address: 817 Board of Trade Bldg.,
Portland, Oregon.

Residence:

The deponent, being duly sworn according to law,
deposes and says that this statement is made on
behalf of the taxpayer named, and that the facts
given below are true and complete:

1. District in which return (if any) was filed:
Oregon.

2. Period (if for tax reported on annual basis,
prepare separate form for each taxable year) from
January 1, 1946, to December 31, 1946.

3. Character of assessment or tax: Income taxes.

4. Amount of assessment, \$12,190.32; dates of
payment 1947.

5. Date stamps were purchased from the Gov-
ernment:

6. Amount to be refunded: \$12,190.32.

7. Amount to be abated (not applicable to in-
come, gift, or estate taxes):

8. The time within which this claim may be
legally filed expires, under Section 322 of I.R.C.
on March 15, 1952.

The deponent verily believes that this claim should be allowed for the following reasons:

1. Oregon excise tax of \$1,021.66 plus interest of \$71.52, a total of \$1,093.18, representing excise tax on 1946 income, was paid in 1948, and under the accrual method of accounting is deductible from 1946 income for Federal Income tax.

2. There is a net operating loss deduction attributable to the carry-back of a net operating loss sustained in 1948 that totally absorbs 1946 income thereby reducing it to zero. (See attached.)

/s/ W. J. JONES & SON, INC.,

By

Subscribed and sworn to before me this day of November, 1949.

.....,

(Signature of officer
administering oath.)

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund	Calendar Year 1946
Net operating loss shown on 1948 Corporation Income tax return	\$138,379.48
Less: Contributions deducted on return not allowable under limitation of Sec. 23(q), I. R. C.	446.00
	<hr/>
Net operating loss shown on return, as adjusted	\$137,933.48
Less: Adjustments required by Sec. 122(d), I. R. C.	—
	<hr/>
Statutory net operating loss for 1948	<u>\$137,933.48</u>

Carry-back of 1948 net operating loss to 1946.....	\$137,933.48	
Reduction under Sec. 122(c) I. R. C.		
Net income for 1946 disclosed by return	\$37,811.93	
Less: Additional Oregon Excise Tax for year 1946, paid in 1948, de- ductible in 1946 under accrual method of accounting	1,093.18	
	<u>\$36,718.75</u>	
Adjustments under Sec. 122(d) I. R. C.	—	
Net income adjusted	\$36,718.75	
Less: Normal tax in- come shown by re- turn	\$37,811.93	
Less: Additional Ore- gon Excise Tax (above)	1,093.18	36,718.75
Excess of net income adjusted over normal tax net income		—
Net operating loss deduction applicable to 1946		\$137,933.48
Less: 1946 net income adjusted.....	\$36,718.75	
Plus: Contributions not deductible under the limitation of Sec. 23 (q) I. R. C., after net operating loss deduction	1,135.00	37,853.75
Net operating loss carry-back to 1947.....		<u>\$100,079.73</u>
Net income shown on return	\$37,811.93	
Less: Technical adjustment for addi- tional 1946 Oregon Excise Tax.....	1,093.18	
Net income shown on return, as adjusted	\$36,718.75	
Net operating loss deduction	137,933.48	
Net income adjusted	—	
Tax liability shown on return	\$12,190.32	
Tax liability, as adjusted	—	
Overassessment	\$12,190.32	

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 7

Form 843

Treasury Department

Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp (Date received): Blank.

State of Oregon,
County of Multnomah—ss.

Name of taxpayer or purchaser of stamps: W. J. Jones & Son, Inc.

Business address: 817 Board of Trade Bldg.,
Portland, Oregon.

Residence:

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed:
Oregon.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from January 1, 1947, to December 31, 1947.

3. Character of assessment or tax: Income taxes.

4. Amount of assessment, \$154,791.75; dates of payment 1948.

5. Date stamps were purchased from the Government:

6. Amount to be refunded: \$38,030.29.

7. Amount to be abated (not applicable to income, gift, or estate taxes):

8. The time within which this claim may be legally filed expires, under Section 322 of I.R.C. on March 15, 1950.

The deponent verily believes that this claim should be allowed for the following reasons:

1. There is a net operating loss deduction in 1947, attributable to the carry-back of a net operating loss sustained in 1948 to 1946, and the carry-forward from 1946 of the amount of the net operating loss deduction not absorbed by 1946 net income to 1947. (See attached.)

/s/ J. W. JONES & SON, INC.,

By

Subscribed and sworn to before me this day of November, 1949.

.....,

(Signature of officer
administering oath.)

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund	Calendar Year 1947
Net operating loss shown on 1948 Corporation Income tax return	\$138,379.48
Less: Contributions deducted on return not allowable under limitations of Sec. 23(q) I. R. C.	446.00
	<hr/>
Net operating loss shown on return, as adjusted	\$173,933.48
Less: Adjustments required by Sec. 122(d) I. R. C.	—
	<hr/>
Statutory net operating loss for 1948.....	\$137,933.48
	<hr/>
Carry-back of 1948 net operating loss of 1946	\$137,933.48
Less: 1946 net income adjusted	37,853.75
	<hr/>
Net operating loss deduction available to carry-back to 1947	\$100,079.73
Reduction under Sec. 122(d) I. R. C.:	
Net income for 1947 disclosed by return	\$407,346.72
Adjustments under Sec. 122(d) I. R. C.	—
	<hr/>
Net income adjusted	\$407,346.72
Less: Normal tax net income.....	407,346.72
	<hr/>
Excess of net income adjusted over normal tax net income	—
	<hr/>
Net operating loss deduction applicable to 1947.....	\$100,079.73
	<hr/>
Normal tax net income shown by return	\$407,346.72
Less: Net operating loss deduction	100,079.73
	<hr/>
Normal tax net income adjusted	\$307,266.99
	<hr/>
Normal tax, as adjusted	\$ 73,744.08
Surtax, as adjusted	43,017.38
	<hr/>
Tax liability as adjusted	\$116,761.46
Tax liability shown on return	154,791.75
	<hr/>
Decrease	\$ 38,030.29
	<hr/>

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 8

Form 843

Treasury Department

Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the
kind of claim filed, and fill in the certificate on the
reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or
Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused,
or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to
estate, gift, or income taxes).

Collector's Stamp (Date received): Blank.

State of Oregon,

County of Multnomah—ss.

Name of taxpayer or purchaser of stamps: W. J.
Jones & Son, Inc.

Business address: 817 Board of Trade Bldg.,
Portland, Oregon.

Residence:

The deponent, being duly sworn according to law,
deposes and says that this statement is made on
behalf of the taxpayer named, and that the facts
given below are true and complete:

1. District in which return (if any) was filed: Oregon.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from January 1, 1944, to December 31, 1944.
3. Character of assessment or tax: Excess Profits Tax.
4. Amount of assessment, \$49,871.47; dates of payment 1945.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: \$30,865.50.
7. Amount to be abated (not applicable to income, gift, or estate taxes) :.....
8. The time within which this claim may be legally filed expires, under Section 322(b) of I.R.C. on March 15, 1952.

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer reported on its Corporation Income Tax return for the year 1946, a net income of \$37,811.93. The net income for the year 1946, was totally absorbed by a net operating loss deduction resulting from a net operating loss sustained for the year 1948. The 1946 net income as adjusted for the net operating loss deduction is zero and the taxpayer has available an unused excess profits credit of \$36,100.00 as computed by use of the in-

come credit method (per RAR for 1944, dated January 22, 1948), which may be carried back from 1946 to 1944, under provision of Section 122 of the Revenue Act of 1945. The application of the unused excess profits credit adjustment against the 1944 excess profits net income results in the reduction of income subject to excess profits tax and the overpayment of excess profits tax for 1944, in the amount of \$30,865.50. (See attached.)

/s/ W. J. JONES & SON, INC.,

By

Subscribed and sworn to before me this day
of November, 1949.

.....,

(Signature of officer
administering oath.)

W. J. Jones & Son, Inc.
Portland, Oregon

Claim for Refund Calendar Year 1944

Computation of tax—1944

Declared value excess profits tax:

Computation as shown by RAR:

Net income for declared value excess

profits tax computation\$ 89,106.26

Less: 10% of \$750,000.00 value of

capital stock 75,000.00

Net income subject to declared value

excess profits tax\$ 14,106.26

Declared value excess profits tax

\$ 931.01

Computation as adjusted—no change

931.01

Difference

—

 Computation of tax—1944 (continued)

Income tax:

Computation as shown by RAR:

Net income for declared value excess
 profits tax\$ 89,106.26
 Add: Net long-term capital gain 309.62

 \$ 89,415.88

Less: Declared value excess profits
 tax 931.01

 Net income\$ 88,484.87

Less: Net long-term
 capital gain\$ 309.62

Income subject to ex-
 cess profits tax 42,075.25 42,384.87

 Balance subject to normal and surtax..\$ 46,100.00

Normal tax\$ 10,791.00

Surtax 7,142.00

 Partial tax\$ 17,933.00

25% of net long-term capital gain 77.41

 Tax liability shown by RAR\$ 18,010.41

Computation as adjusted:

Net income\$ 88,484.87

Less: Net long-term
 capital gain\$ 309.62

Income subject to excess
 profits tax 5,975.25 6,284.87

 Balance subject to normal and surtax..\$ 82,200.00

Normal tax (24%)\$ 19,728.00

Surtax (16%) 13,152.00

 Partial tax\$ 32,880.00

25% of net long-term capital gain 77.41

 Tax liability as adjusted\$ 32,957.41

 Deficiency in normal and surtax by reason of un-
 used excess profits credit carry-back from 1946....\$ 14,947.00

Excess Profits Tax:

Computation as shown by RAR:

Excess profits net income	\$ 88,175.25
Less: Specific exemption....	\$10,000.00
Excess profits credit.....	36,100.00
Unused excess profits credit adjustment	— 46,100.00
Adjusted excess profits net income	\$42,075.25
95% of adjusted excess profits net income	\$39,971.49
Less: Sec. 784 credit	3,997.15
Tax liability shown by RAR	<u>\$35,974.34</u>

Computation as adjusted:

Excess profits net income	\$ 88,175.25
Less: Specific exemption....	\$10,000.00
Excess profits credits.....	36,100.00
Unused excess profits credit adjustment (carry- back from 1946)	36,100.00 82,200.00
Adjusted excess profits net income.....	\$ 5,975.25
95% of adjusted excess profits net income	\$ 5,676.49
Less: Sec. 784 credit	567.65
Tax liability as adjusted	<u>\$ 5,108.84</u>

Overassessment claimed by reason of unused excess profits credit carry-back from 1946	<u><u>\$30,865.50</u></u>
--	---------------------------

Unused Excess Profits Credit

1946 Normal tax net income disclosed by return	\$37,811.93
Less: Net operating loss deduction resulting from a net operating loss carry-back from 1948 (see schedule supra)	\$37,811.93
Normal tax net income as adjusted	<u>—</u>
Excess profits credit determined by the income credit method (as accepted by RAR dated January 22, 1948, for the years 1944-1945)....	\$36,100.00
Excess profits net income—1946	<u>—</u>
Unused excess profits credit—carry-back of 1944.....	<u><u>\$36,100.00</u></u>

1944	Net income, 1944, as disclosed by RAR	\$88,484.87
	Less: Excess of net long-term capital gain	309.62
		<u>\$88,175.25</u>
	Less: Income subject to excess profits tax as adjusted	5,975.25
		<u><u>\$82,200.00</u></u>
	Balance subject to normal and surtax, as adjusted	<u><u>\$82,200.00</u></u>
	Excess profits net income, 1944, as disclosed by RAR	\$88,175.25
	Less: Specific exemption	\$10,000.00
	Excess profits credit, per RAR....	36,100.00
	Unused excess profits credit (1946 carry-back)	36,100.00
		<u>82,200.00</u>
	Adjusted excess profits net income as adjusted	<u><u>\$ 5,975.25</u></u>

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 9

Form 1205

Treasury Department
Internal Revenue Service
Seattle 1, Washington

Office of
Internal Revenue Agent in Charge
Seattle Division

March 10, 1950.

W. J. Jones & Son, Inc.,
817 Board of Trade Building,
Portland 4, Oregon.

Gentlemen:

I enclose a copy of the report of the examination of your income tax returns for the years 1946, 1948, in connection with your claim for a refund of \$12,190.32. After consideration by this office, the

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Years: 1946, 1948. (See attached report for details.)

If You Agree to this adjustment, the enclosed form of acceptance should be executed and forwarded to this office promptly, in order that a certificate of overassessment may be issued without unnecessary delay.

If You Do Not Agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you. This office will be pleased to answer any questions which may occur to you in your examination of the enclosed report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the adjustment on the enclosed form or a written protest, a recommendation will be made to the Commissioner of Internal Revenue that a certificate of overassessment be issued in the amount stated above.

Your prompt acknowledgment of the receipt of

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)
this letter and related papers upon the enclosed
form will be much appreciated.

Respectfully,

/s/ A. R. STOCKTON,

Internal Revenue Agent
in Charge.

Enclosures:

Report of examination.

Form of acceptance.

Form of acknowledgment.

AGE:ebp

Form 1292

Treasury Department

Internal Revenue Service

Instructions as to the Preparation of Protests
Against Findings of Revenue Agent's Reports

The protest and any additional statement of facts must be submitted to this office, executed in triplicate under the oath of the taxpayer (in the case of a corporation, the oath of a duly constituted officer) and contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation, the principal office or place of business);

(b) In the case of a corporation, the name of the State of incorporation;

(c) The designation by date and symbol of the

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

letter advising of the proposed adjustments in tax liability with respect to which the protest is made;

(d) The designation of the year or years involved and a statement of the amount of tax in dispute for each year;

(e) An itemized schedule of the findings to which the taxpayer takes exception;

(f) A statement of the grounds upon which the taxpayer relies in connection with each exception; (See quotation on reverse side from Conference and Practice Requirements, Bureau of Internal Revenue, revised February, 1942);

(g) In case the taxpayer desires a hearing, a statement to that effect;

(h) In case the protest is prepared or filed by an attorney or agent, it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true; and

(i) In case the taxpayer is represented by an attorney or agent it is essential that such representative be admitted to practice before the United States Treasury Department and be provided with a power of attorney, signed by the taxpayer, authorizing him to act for the taxpayer. Powers of attorney must be furnished in duplicate with one additional copy for each taxable year in excess of one.

(j) Attention of representatives is called to the necessity of filing with this office a "Statement

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)
Relative to Fees'' as required by Section 2(y)
Treasury Department Circular No. 230, revised.

Conference and Practice Requirements
Bureau of Internal Revenue
Revised February, 1942

Evidence Required to Substantiate Facts Alleged
in Conferences

No reduction in taxes proposed nor increases in allowance of claims shall be made unless the evidence upon which such action is taken is submitted in writing and in verified form. All evidence except that of a supplementary or incidental character shall be submitted over the sworn signature of the taxpayer.

The sworn statement of facts must be submitted at least 5 days before the conference date except as hereinafter provided, and must meet all the issues raised by the Bureau which the taxpayer desires to contest. If the sworn statement of facts is not submitted at least 5 days before the conference, then it must be accompanied by a sworn statement setting out specifically the reasons for not having complied with the 5-day rule. Nothing herein shall preclude the taxpayer from submitting additional or supporting evidence within a reasonable time after the conference.

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Preliminary Statement

The overassessment was principally caused by the allowance of a net operating loss deduction.

Findings were explained to Harold F. Smith, Secretary. Agreement was not secured.

Consideration has been given in this report to a claim for refund filed Nov. 4, 1949, in amount of \$12,190.32, for the year 1946. This claim has been allowed in part as explained in the body of this report.

Table of Contents

Schedule 1	Adjustments to Net Income	1946
Schedule 2	Computation of Tax	
Schedule 3	Computation of Unused Excess Profits Credit	
Schedule 4	Adjustments to Net Income	1948
Exhibit A	Balance Sheets	
Exhibit B	Analysis of Surplus	1946
Exhibit C	Analysis of Surplus	1948
Exhibit D	Reconciliation of Income	1946
Exhibit E	Reconciliation of Income	1948
Exhibit F	Adjustment of Fixed Assets	
Exhibit G	Reserve for Depreciation	

Schedule No. 1

Year ended: 12/31/46

Adjustments to Net Income

Net income as disclosed by return	\$37,811.93
As corrected	24,852.31
Net adjustment as computed below	12,595.62
Unallowable deductions and additional income:	
(a) Depreciation	\$ 24.49
Total	24.49

Nontaxable income and additional deductions:

(b) 1946 Oregon excise	1,021.66
(c) Property tax refund	119.70
(d) Accrued interest	2,300.22
(e) Operating loss deduction	9,542.53
Total	12,984.11
Net adjustment as above	12,959.62

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Schedule No. 1-A—(Continued)

Year: 1946

Explanation of Items

(a) \$24.49—A book error, over depreciating stevedoring equipment by this amount in 1946, was corrected on the books in 1947. The item was not reported as income in the 1947 return.

(b) \$1,021.66—1946 Oregon Excise tax paid in 1948 is allowed as an accrual. The item was not previously deducted.

(c) \$119.70—To reverse an adjustment made on the return increasing book income by this amount—See Exhibit "D" herein. The refund was credited to book P & L, and should not again have been added.

(d) \$2,300.22—This item represents interest accrued as receivable from Mina Del Refugio, S. A., a Mexican corporation. It is eliminated from income for reason as explained in Schedule 4-A (f) herein.

(e) Operating net loss for 1948, as per Schedule No. 4
 herein\$9,542.53
 Net operating loss deduction for 1946 9,542.53

Schedule No. 2

Year: 12/31/46

Computation of Tax
Normal Tax Computation

Net income, Schedule 1	\$24,852.31
Normal-tax net income	24,852.31
Normal tax. If normal-tax net income is:	
Not over \$5,000; tax at 15%	750.00
Over \$5,000 but not over \$20,000; \$750 plus 17% of excess over \$5,000	2,550.00
Over \$20,000 but not over \$25,000; \$3,300 plus 19% of excess over \$20,000	921.94

Surtax Computation

Surtax. If surtax net income is:	
Not over \$25,000; tax at 6%	1,491.14
Income tax liability	5,713.08*
Balance	5,713.08
Income tax assessed	12,190.32
Overassessment in income tax	6,477.24

*Note: The alternative tax method results in exactly the same amount of tax in this case.

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Schedule No. 3

Year ended: 12/31/46

Computation of Unused Excess Profits Credit

Normal tax net income, before net operating loss deduction	\$ 34,394.84
Less: Net long-term capital gain 1946	(1,250.00)
Excess profits net income, before net operating loss deduction	33,144.84
Net operating loss deduction from Schedule No. 1	\$ 9,542.53
Adjustment under Sec. 711(a) (1) (J) I.R.C.:	
Add: Net long-term capital gain 1946.....	(1,250.00)
Net operating loss deduction for excess profits tax purposes	8,292.53
Excess profits net income (same as Sch. No. 1)	24,852.31
Excess profits credit 1946:—	
Corrected net aggregate base period net income per Schedule 5 of 1941 report dated 7/31/43 (same applies for 1946)	\$124,758.37
Less: Base period net income for 1936, the smallest of the base period	(7,702.08)
Total of the other 3 years	117,056.29
Average— $\frac{1}{3}$	39,018.76
75% of \$39,018.76=1936 base period net income under provisions Sec. 713(e) I. R. C.	29,264.07
Add: Other 3 base period years, as above	117,056.29
Total	146,320.36
Average base period net income— $\frac{1}{4}$	36,580.09
Excess Profits Credit 1946:	
95% of \$36,580.09, or	34,751.09
Excess profits net income, as above	24,852.31
Unused excess profits credit 1946	9,898.78

 Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Schedule No. 4

Year ended: 12/31/48

Adjustments to Net Income

Net loss as disclosed by return	\$(138,379.48)
As corrected, loss	(9,542.53)
Net adjustment as computed below	128,836.95
Unallowable deductions and additional income:	
(a) Yacht depreciation	\$ 215.64
(b) Yacht expense	997.46
(c) Deduction as bad debt	134,555.21
(d) Contributions deducted	446.00
Total	\$136,214.31
Nontaxable income and additional deductions:	
(e) Interest on 1946 Oregon Inc. tax.....	71.52
(f) Accrued interest	7,305.84
Total	7,377.36
Net adjustment as above	128,836.95

Schedule No. 4-A

Year: 1948

Explanation of Items

(a) Yacht depreciation written off in 1948 on books	\$1,293.84
Allowed $\frac{1}{3}$ as per conference settlement prior year.....	431.28
Claimed	646.92
Difference	215.64
(b) Yacht expenses per books	5,984.77
Allowed $\frac{1}{3}$ as per conference settlement prior year.....	1,994.92
Claimed	2,992.38
Difference	997.46

(c) From time to time over the period Nov. 1944 to Dec. 1946, Clayton R. Jones, who with his immediate family owns the capital stock of W. J. Jones & Son, Inc., advanced money to Mina Del Refugio, S. A., a Mexican corporation, and took notes, each note payable to Clayton R. Jones, 2 years from date, interest 6%. These notes, of which there are about 32 in number, were endorsed by Clayton R. Jones to W. J. Jones & Son, Inc., without recourse, and Clayton R. Jones' account was credited \$121,763.74, the face value of the notes, plus \$4,654.57 for accrued interest. This occurred in the latter part of 1946, one transfer on Aug. 31, 1946 and one Dec. 31, 1946. Jones & Son, Inc. accrued and reported interest income from these notes as follows:

1946—\$2,300.22; 1947—\$7,305.84; 1948—\$7,305.84. This made a total due from Mina Del Refugio of \$143,330.21, on which no pay-

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

ment had been received. The Directors, at a meeting on Dec. 27, 1948, voted to abandon all real property and mining claims, and made arrangements to dispose of the mining equipment and supplies. It was estimated that there would be recovered on the above notes and interest, the sum of about \$8,775.00, and the taxpayer wrote off the balance, or \$134,555.21 as a worthless debt in 1948.

(c) Mina Del Refugio, S. A., has an authorized capital of 5000 shares, par value one peso each, or about 20c. This authorized capital was all issued for the sum of \$1,000.00. Clayton R. Jones acquired and paid cash for 2,156 shares on this basis. This \$1,000.00 of capital was wholly inadequate to conduct the gold mining operation, and the remainder of the capital, for which notes were taken, was in reality risk investment having the incidents of stock. In *Talbot Mills v. Commissioner*, 326 U.S. 521, the Supreme Court said:

"There is no one characteristic * * * which can be said to be decisive in the determination of whether the obligations are risk investments in the corporations or debts. So called stock certificates may be authorized by corporations which are really debts and promises to pay may be executed which have incidents of stock. * * *"

It is held that the advances were contributions to the risk capital of this corporation, the nature of whose business is always hazardous, and that any ensuing worthlessness would not constitute a bad debt as claimed, but would have the status of a capital loss for income tax purposes. In this case, actual final liquidation had not been completed at Dec. 31, 1948, and there was not a closed transaction, or an allowable capital loss in that year.

(d) \$446.00 Contributions deducted on the return filed are not allowable because there was a net loss for 1948, and contributions may not exceed 5% of net income otherwise determined.

(e) \$71.52—Interest paid in 1948 on 1946 Oregon Excise Tax is an allowable deduction in the year paid. The deduction was not claimed in 1948.

(f) \$7,305.84—This item represents interest accrued as receivable from Mina Del Refugio, S. A., a Mexican corporation. See explanation under (c) above. It is there held that the investment has the incidents of capital investment in this corporation, and income therefrom would constitute dividends, of which none have been declared or paid.

Form 886-T
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1942)

Name of Taxpayer J. Jones & Son, Inc.

Date of Report January 27, 1950, 19

Examining Officer C. E. Kimberley

Index:

STATEMENT OF TOTAL TAX LIABILITY

YEAR	LIABILITY		PREVIOUSLY ASSESSED*		ADJUSTMENTS PROPOSED IN THIS REPORT			
	Tax	Penalty	Tax	Penalty	TAX		PENALTY	
					Deficiency	Overassessment	Deficiency	Overassessment
INCOME TAX								
6	5,713.08		12,190.32			6,477.24		
8	none		none					
TOTAL								

TOTAL								

TOTAL								

*Summary of Adjustments of Assessments Year 19

	INCOME TAX			
Originally assessed	\$.....	\$.....	\$.....	\$.....
Deficiency assessed, 19.....,				
Overassessment scheduled, 19.....,				
TOTAL PREVIOUS ASSESSMENTS				

Year 19

Originally assessed	\$.....	\$.....	\$.....	\$.....
Deficiency assessed, 19.....,				
Overassessment scheduled, 19.....,				
TOTAL PREVIOUS ASSESSMENTS				

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

EXHIBIT A-1

Years: 1946, 1947, 1948

Explanation of Items

(a) and (c) To reclassify these items and set up in separate accounts.

(b) Accrued interest receivable on books is adjusted as explained in Schedule 4-A (f).

(d) To reclassify this item, as property of C. R. Jones.

(e) Fixed assets are adjusted as explained in Exhibit F.

(f) Taxes capitalized in prior report, on property purchased.

(g) (h) Items charged off on books, but capitalized prior report.

(i) To accrue 1946 Oregon Excise tax.

(j) To eliminate prepaid property tax.

(k) Reserve for depreciation is adjusted as explained in Exhibit G.

(l) To set up liability resulting from 1944 and 1945 renegotiation; paid in 1947.

(m) Estimated amount to be recovered from Mina Del Refugio, S. A. on investment in that corporation. This is but an estimate and has been eliminated, to be replaced by actual amounts as and when forthcoming.

EXHIBIT B

Year ended: 12/31/46

Analysis of Surplus and Reconciliation of Amended Surplus
With Amended Taxable Net Income

Item	Per Books	Amended
Surplus beginning of period	347,711.92	358,144.02
Add:		
Income per books and corrected tax- able net income	30,497.84	24,852.31
Nontaxable income for period:		
Net operating loss deduction	378,209.76	9,542.53 392,538.86
Deduct		
Dividend (dates):		
1/31/46 cash	7,500.00	7,500.00
Income taxes 1945 paid	105,854.91(1)	75,152.31(1)

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Item	Per Books	Amended
Unallowable deductions:		
Life insurance		\$1,175.73
Political contributions		300.00
Club memberships.....		1,029.40
$\frac{2}{3}$ of yacht expense....		1,517.30
Other charges to surplus during period: 1942 & 1943 Fed. Inc. tax deficiency.....	2,603.98	2,603.98
	115,958.89	89,278.72
Surplus end of period	262,250.87	303,260.14
(1) \$30,702.60, difference between books and amended represents 1945 tax credit under Sec. 3806(b).		

EXHIBIT C

Year ended: 12/31/48

Analysis of Surplus and Reconciliation of Amended Surplus
With Amended Taxable Net Income

Item	Per Books	Amended
Surplus beginning of period	\$436,839.27	\$478,888.94
Add:		
Loss per books and corrected(146,761.45)	290,077.82	(9,542.53)
		469,346.41
Deduct:		
Unallowable deductions:		
Yacht depreciation....		862.56
Yacht expense.....		3,989.85
Life insurance		2,098.88
Club dues.....		1,425.60
Political contribution		125.00
Contributions deducted on return....		446.00
		8,947.89
Surplus end of period	290,077.82	460,398.52

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

EXHIBIT D

Year ended: 12/31/46

Reconciliation of Income Per Books
With Income Per Return

Net income per books	\$30,497.84
Additions to Income:	
Life insurance	\$1,175.73
Refund of property tax credited book P & L....	119.70
Political contributions	300.00
Club memberships	1,029.40
2/3 of yacht expense	1,517.30
1945 Oregon Excise Tax paid	7,776.17
1944 Oregon Excise Tax paid	304.01
Total additions	12,222.31
Total	\$42,720.15
Deductions from Income:	
1946 property tax paid.....	\$3,466.36
Charged book P & L	3,391.49* 74.87
Depreciation cost of yacht restored to books	4,833.35
Credit to P. & L. Eliminated	
*This is exclusive of \$119.70 refund referred to above.	
Total deductions	\$ 4,908.22
Net income per return of taxpayer	\$37,811.93

EXHIBIT E

Year ended: 12/31/48

Reconciliation of Income Per Books
With Income Per Return

Net income per books	(\$146,761.45)
Additions to Income:	
1/2 yacht expense	\$2,992.39
1/2 yacht depreciation	646.92
Life insurance	2,098.88
Club dues	1,425.60
Political contribution	125.00
1946 Oregon Excise Tax	1,021.66
Interest on 1946 Oregon Excise Tax	71.52
Total additions	8,381.97
Total	(138,379.48)
Net income per return of taxpayer (loss)	(138,379.48)

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

EXHIBIT F

Adjustment of Fixed Assets Per Balance Sheet

Adjustment crediting fixed assets 12/31/45—	
per 1945 report	\$88,772.99
Less: 1936 Ford truck, burned, previously eliminated	
in 1943 R.A.R.	(1,119.84)
1937 Cad. sold, previously eliminated in 1942 R.A.R.....	(1,970.70)
12/31/46 Credit adjustment	85,682.45
12/31/47 Credit adjustment	85,682.45
Less: 1932 Elwell lift truck previously eliminated in	
R.A.R.	(4,253.21)
12/31/48 credit adjustment	81,429.24

EXHIBIT G

Reserve For Depreciation—Amended

	Debit	Credit	Balance
12/31/45 Balance—			
per Prior Report		\$68,352.60	\$68,352.60
1946 Depreciation per return.....		10,355.90	
1946 Depreciation on auto			
charged C. R. Jones.....		95.55	
1946 Fordson tractor traded-in.....	870.63		77,933.42
1946 Error in depreciation steve.			
Eq. 1946 on books in 1947.....		(24.49)	77,908.93
1947 Depreciation per return		13,783.86	
Dwelling sold	571.43		
1941 Ford Pickup truck			
(sold Aug. '45)	131.25		
1940 Chev. sedan sold	828.92		90,161.19
1948 Depreciation per return		15,921.32	
Depreciation on yacht (1½)....		646.92	
Depreciation on Nash sold	560.34		
Depreciation on Ditto Mach.			
sold	63.60		
Depreciation on Yale Lift			
truck	5,339.40		100,766.09
12/31/48 Balance	100,766.09		
	109,131.66	109,131.66	

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)

Seattle Div.

Form 873

Treasury Department

Internal Revenue Service

Acceptance of Proposed Overassessment

The following overassessment or overassessments
of tax are hereby accepted as correct:

taxable year ended 12/31/46, income tax in
the sum of\$6,477.24

taxable year ended 12/31/48, income tax in
the sum of\$ None

taxable year ended (declared value)
excess-profits tax in the sum of\$.....

taxable year ended excess profits
tax in the sum of\$.....

taxable year ended in the sum of ..\$.....

amount to the total sum of\$6,477.24

as indicated in the statement furnished the under-
signed taxpayer(s), under date of March 10, 1950.

W. J. JONES & SON, INC.,

Taxpayer.

Portland, Oregon.

By

[Seal]

Date.....

Note.—The execution and filing of this acceptance
at the address shown in the accompanying letter

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)
will expedite the indicated adjustment of your tax liability. This acceptance is not an agreement as provided under Section 3760 of the Internal Revenue Code.

If this acceptance is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 10

Form 1205

Treasury Department
Internal Revenue Service
Seattle 1, Washington

Office of
Internal Revenue Agent in Charge
Seattle Division

March 10, 1950.

W. J. Jones & Son, Inc.,
817 Board of Trade Building,
Portland 4, Oregon.

Gentlemen:

I enclose a copy of the report of the examination of your income tax returns for the year 1947, in

connection with your claim for a refund of \$38,030.29. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year	Overassessment
1947	\$1,830.37

If You Agree to this adjustment, the enclosed form of acceptance should be executed and forwarded to this office promptly, in order that a certificate of overassessment may be issued without unnecessary delay.

If You Do Not Agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you. This office will be pleased to answer any questions which may occur to you in your examination of the enclosed report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the adjustment on the enclosed form or a written protest, a recommendation will be made to the

Commissioner of Internal Revenue that a certificate of overassessment be issued in the amount stated above.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully.

/s/ A. R. STOCKTON,
Internal Revenue Agent
in Charge.

Enclosures :

Report of examination.

Form of acceptance.

Form of acknowledgment.

AGE:ebp

Instructions as to the Preparation of Protests
Against Findings of Revenue Agents' Reports

[See Page 186 to 188 of this printed record.]

Form 886-T
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1942)

Name of Taxpayer J. Jones & Son, Inc.

Date of Report January 27, 1950, 19

Index:

Examining Officer W. E. Kimberley

STATEMENT OF TOTAL TAX LIABILITY

YEAR	LIABILITY		PREVIOUSLY ASSESSED*		ADJUSTMENTS PROPOSED IN THIS REPORT			
	Tax	Penalty	Tax	Penalty	TAX		PENALTY	
					Deficiency	Overassessment	Deficiency	Overassessment
INCOME TAX								
1947	152,361.38		154,791.75			1,30.37		
TOTAL								

TOTAL								

TOTAL								

*Summary of Adjustments of Assessments Year 19

	INCOME TAX			
Originally assessed	\$	\$	\$	\$
Deficiency assessed, 19				
Overassessment scheduled, 19				
NET PREVIOUS ASSESSMENTS				

Year 19

Originally assessed	\$	\$	\$	\$
Deficiency assessed, 19				
Overassessment scheduled, 19				
NET PREVIOUS ASSESSMENTS				

Preliminary Statement

The overassessment was principally caused by elimination of item which was accrued on books as interest receivable. See further explanation in Sch. 1-A (d).

Findings were explained to Harold F. Smith, Sec. Agreement was not secured.

Consideration has been given in this report to a claim for refund, filed Nov. 4, 1949, for the year 1947, in amount of \$38,030.29. This claim is for the allowance of a net operating loss deduction. As determined herein, and in report covering 1946 and 1948 of even date, there is no net operating loss deduction for the year 1947.

Schedule No. 1

Year ended: 12/31/47

Adjustments to Net Income

Net income as disclosed by return	\$407,346.72
As corrected	402,529.94
Net adjustment as computed below	4,816.78
Unallowable deductions and additional income:	
(a) Yacht depreciation	\$ 862.56
(b) Yacht expense	1,815.13
Total	\$2,677.69
Nontaxable income and additional deductions:	
(c) Loss on depreciable assets	\$ 188.63
(d) Accrued interest	7,305.84
Total	7,494.47
Net adjustment as above	4,816.78

Schedule No. 1-A

Year: 1947

Explanation of Items

(a) Yacht depreciation written off in 1947 on books....	\$1,293.84
Allowed $\frac{1}{3}$ as per conference settlement prior year..	431.28
Claimed	1,293.84
<hr/>	
Difference	862.56
(b) Yacht expenses per books	4,356.32
Allowed $\frac{1}{3}$ as per conference settlement prior year..	1,452.11
Claimed	3,267.24
<hr/>	
Difference	
(c) Loss on sale of depreciable, as reported in return filed	188.63
Loss claimed as a deduction in return	none
Loss allowable as a deduction	188.63

(d) \$7,305.84—This item represents interest accrued as receivable from Mina Del Refugio, S. A., a Mexican corporation. It is eliminated from income for reason as explained in Schedule 4-A (f) of Report of even date covering the years 1946 and 1948.

Schedule No. 2

Year: 12/31/47

Computation of Tax
Normal Tax Computation

Net income, Schedule 1	\$402,529.94
Normal-tax net income	402,529.94
Normal tax. If normal-tax net income is:	
Over \$50,000; tax at 24%	96,607.19

Surtax Computation

Net income, Schedule 1	402,529.94
Surtax net income	402,529.94
Surtax. If surtax net income is:	
Over \$50,000; tax at 14%	56,354.19
Income tax liability	152,961.38
Balance	152,961.38
Income tax assessed	154,791.75
Overassessment of income tax	1,830.37

EXHIBIT A

Year ended: 12/31/47

**Analysis of Surplus and Reconciliation of Amended Surplus
With Amended Taxable Net Income**

Item	Per Books	Amended
Surplus beginning of period	\$262,250.87	\$303,260.14
Add:		
Income per books and corrected taxable net income	401,570.47	402,529.94
Nontaxable income for period:		
1942 Post war refund rec.		5,114.56
1943 Post war refund rec.		2,075.21
	663,821.34	712,979.85
Deduct:		
Dividends (dates):		
2/31 cash	60,000.00	60,000.00
Income taxes paid		
1946	12,190.32	12,190.32
Income taxes accrued		
1947	154,791.75	154,791.75
Unallowable deductions:		
Life insurance		1,900.87
Club dues		1,341.20
Political contributions		100.00
1/3 yacht expense		2,904.21
1/3 yacht depreciation		862.56
	226,982.07	234,090.91
Surplus end of period	436,839.27	478,888.94

See balance sheets in 1946-1948 report of even date.

EXHIBIT B

Year ended: 12/31/47

Reconciliation of Income Per Books
With Income Per Return

Net income, per books	\$401,570.47
Additions to Income:	
Life insurance	\$1,900.87
Loss	188.63
Club dues	1,341.20
1/4 of yacht expense	1,089.08
Political contributions	100.00
Deferred property tax a/c closed	1,741.28
Renegotiation payments 1944 & 1945	6,629.45
Total additions	12,990.51
Total	414,560.98
Deductions from Income:	
1942 Post war refund Cr. Rec.	\$5,144.56
1943 Post war refund Cr. Rec.	2,075.21
1946 Depreciation error	24.49*
Total deductions	7,214.26
Net income per return of taxpayer	407,346.72

*This is to eliminate 1947 book credit to P & Loss of this amount. Item is taken up in 1946 report.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 11

Form 1205

Treasury Department
Internal Revenue Service
Seattle 1, Washington

Office of
Internal Revenue Agent in Charge
Seattle Division

March 10, 1950.

W. J. Jones & Son, Inc.,
817 Board of Trade Building,
Portland 4, Oregon.

Gentlemen:

I enclose a copy of the report of the examination of your income tax returns for the year 1944, in connection with your claim for a refund of \$29,712.19. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year: 1944. (See attached report for details.)

If You Agree to this adjustment, the enclosed form of acceptance should be executed and forwarded to this office promptly, in order that a certificate of overassessment may be issued without unnecessary delay.

If You Do Not Agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date

Plaintiff's Pre-Trial Exhibit No. 11—(Cont.)
of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you. This office will be pleased to answer any questions which may occur to you in your examination of the enclosed report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the adjustment on the enclosed form or a written protest, a recommendation will be made to the Commissioner of Internal Revenue that a certificate of over-assessment be issued in the amount stated above.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

/s/ A. R. STOCKTON,

Internal Revenue Agent in
Charge.

Enclosures:

Report of examination.

Form of acceptance.

Form of acknowledgment.

AGE:ebp

Instructions as to the Preparation of Protests
Against Findings of Revenue Agent's Reports

[See pages 166 to 168 of this printed Record.]

Form 886-T
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1942)

Name of Taxpayer J. Jones & Son, Inc.

Date of Report January 27, 1950, 19__

Index:

Examining Officer C. E. Kimberley

STATEMENT OF TOTAL TAX LIABILITY

YEAR	LIABILITY		PREVIOUSLY ASSESSED*		ADJUSTMENTS PROPOSED IN THIS REPORT			
	Tax	Penalty	Tax	Penalty	TAX		PENALTY	
					Deficiency	Overassessment	Deficiency	Overassessment

INCOME TAX

944	22,476.92		18,010.41		4,466.51			
TOTAL								

DECLARED VALUE EXCESS PROFITS TAX

944	931.01		931.01		none			
TOTAL								

EXCESS PROFITS TAX

944	27,510.88		35,974.34		8,463.46			
TOTAL								

*Summary of Adjustments of Assessments Year 19 44

	INCOME TAX	D.V.E.P. Tax	E.P. Tax	
Originally assessed	\$ 18,010.41	\$ 1,667.40	\$ 49,871.47	\$
Credit - Sec. 3806(b)(1)	-0-	693.27	8,388.29	
Deficiency assessed, 19__				
Credit - Sec. 784 Form 7986	-0-	-0-	4,987.15	
Overassessment scheduled, 19 48	-0-	43.12	521.69	
NET PREVIOUS ASSESSMENTS	18,010.41	931.01	35,974.34	

Year 19__

Originally assessed	\$	\$	\$	\$
Deficiency assessed, 19__				
Overassessment scheduled, 19__				
NET PREVIOUS ASSESSMENTS				

Plaintiff's Pre-Trial Exhibit No. 11—(Cont.)

Preliminary Statement

The overassessment was caused by the allowance of an unused excess profits credit adjustment.

Findings were explained to Harold F. Smith, Secretary. Agreement was not secured.

Consideration has been given in this report to a claim for refund for the year 1944, dated 11/4/49, in the amount of \$30,865.50. This claim has been allowed in part as explained in the body of this report.

Schedule No. 1

Year ended: 12/31/44

Adjustments to Net Income

Net income as disclosed by report of 1/22/48	\$89,415.88
As corrected	89,415.88
Net adjustment as computed below	none

Schedule No. 2

Year ended: 12/31/44

Computation of Tax

Declared Value Excess Profits Tax Computation

No change in D. V. E. P. Tax liability

Alternative Income Tax Computation

Net income for declared value excess-profits tax computation	\$89,106.26
Add: Excess of net long-term capital gain over short- term capital loss	309.62
Total, Schedule No. 1	89,415.88
Less: Declared value excess profits tax	931.01
Net income	88,484.87
Less: Excess of net long-term capital gain	(309.62)
Less: Adjusted excess profits net income, Schedule 4..	32,176.47
Balance subject to normal and surtax	55,998.78

Plaintiff's Pre-Trial Exhibit No. 11—(Cont.)

Normal Tax Computation

Normal-tax net income	\$55,998.78
Normal-tax (24% of normal-tax net income).....	13,439.71

Surtax Computation

Surtax net income	55,998.78
Surtax (16% of surtax net income)	8,959.80
Partial tax	22,399.51
Add: 25% of capital gain	77.41
Balance of normal tax and surtax	22,476.92
Income tax assessed	18,010.41
Deficiency of income tax	4,466.51

Schedule No. 3

Year ended: 12/31/44

Adjustments to Excess-Profits Net Income for the
Taxable Year Computed Under Income Credit Method

Excess-profits net income for the taxable year computed under income credit method as disclosed by report of 1/22/48	\$88,175.25
As corrected	88,175.25
Net adjustment	none

Plaintiff's Pre-Trial Exhibit No. 11—(Cont.)

Schedule No. 4

Year ended : 12/31/44

Excess Profits Tax Computation

1. Excess profits net income, Schedule 3..	\$88,175.25
2. Less: Specific exemption	\$10,000.00
3. Excess profits credit per original report	36,100.00
4. Unused excess profits credit adjustment, Schedule 5	9,898.78 55,998.78
5. Adjusted excess profits net income.....	32,176.47
6. 95% of Item 5	30,567.65
7. Surtax net income (computed without regard to the credit provided by section 26(e)), Schedule 2..	88,484.87
8. 80% of Item 7	70,787.90
9. Income tax (other than section 102), Schedule 2	22,476.92
10. Excess of Item 8 over Item 9	48,310.98
11. Item 6, or Item 10, whichever is lesser..	30,567.65
12. Less: Credit, Sec. 784(a)	3,056.77
13. Correct excess profits tax liability.....	27,510.88
14. Previous assessment	35,974.34
15. Overassessment in excess profits tax....	8,463.46

Schedule No. 5

Year: 1944

Unused E. P. Credit Adjustment

Unused E. P. Credit per Sch. No. 3 of 1946 Report of even date	\$9,898.78
Unused E. P. Credit Adjustment	9,898.78

Plaintiff's Pre-Trial Exhibit No. 9—(Cont.)
PLAINTIFF'S PRE-TRIAL EXHIBIT No. 12

U. S. Treasury Department
Internal Revenue Service
Seattle 1, Wash.

Office of
Internal Revenue Agent in Charge
Seattle Division

August 17, 1950.

Mr. Clayton R. Jones,
817 Board of Trade Building,
Portland 4, Oregon.

Dear Mr. Jones:

Reference is made to the report of examination covering your income tax liability for the year 1946 which was forwarded to you on June 9, 1949.

As a result of additional information secured subsequent to the time that the report was prepared, a revision in the proposed deficiency has been made. There is accordingly forwarded herewith a copy of the revised statement showing the change in tax liability and a recomputation of the deficiency. If you are not in agreement with the indicated change, an amendment to your protest dated July 5, 1949, should be filed with this office.

Very truly yours,

/s/ E. HALLOWELL,

Acting Internal Revenue
Agent in Charge.

CC—Mr. Kinsey
IGG:mtr

Office of
Internal Revenue Agent In Charge
Seattle Division
Revised Statement

Portland, Oregon
August 14, 1950

Taxpayer: Clayton R. Jones,
817 Board of Trade Building,
Portland, Oregon.

As a result of protest filed and a conference held in connection therewith, the following adjustments are found to be necessary in the income tax liability of the above named individual for the calendar year 1946.

Deficiency in Tax per R.A.R.	Deficiency in Tax as Amended	Difference
\$20,539.97	\$24,386.97	\$3,847.00

Detail of adjustments is shown in the following schedules:

Schedule 1

Year 1946

Net Income

Net income disclosed by revenue agent's report.....	\$95,211.10
Increase: Interest income	4,654.57
Net income amended	<u>\$99,865.67</u>

Explanation

Accrued interest on Mina Del Refugio S. A. notes realized upon sale of such notes in 1946 not included in gross income by taxpayer.

Schedule 2

Computation of Income Tax—Alternative Method
For Calendar Year 1946

Net income, Schedule 1	\$99,865.67
Less: Net long-term capital gains	1,299.75
Ordinary net income	<u>\$98,565.92</u>
Less: Exemptions	500.00
Normal tax and surtax net income	<u>\$98,065.92</u>
Tentative normal tax and surtax	\$65,637.35
Less: 5% of tentative tax	3,281.87
Balance	<u>\$62,355.48</u>
5% of net long-term gain	649.88
Income tax liability	<u>\$63,005.36</u>
Income tax liability disclosed by return..	38,618.39
Deficiency in tax	<u>\$24,386.97</u>

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 46

Translation

United States of Mexico

General Notarial Archives of the State of Sonora

In Charge of

Citizen Armando V. Escalente

Second Certified Copy of the Articles of Incorporation of the Corporation "Mina Del Refugio, Sociedad Anonima," With Capital Stock of Five Thousand Pesos, of Fifty Years Duration, Organized by Messrs. Enrique Torres and Malcom C. Little.

Hermosillo, Sonora, Mexico, October 18, 1950

Translation

On each sheet revenue stamps to the value of 1.20 pesos and the seal of the Notarial Archives of the State of Sonora.

Vol. 12, No. 644.

In the City of Nogales, District of Magdalena, State of Sonora, Mexico, on the 5th day of January, 1932, before me, Atty. Arsenio Espinosa, Notary Public No. 6, and the witnesses hereto, Messrs. Alfredo H. Hernandez and Cristobal Espinosa, both of legal age, married, employees, residents of this place and competent to testify, appeared Messrs. Enrique Torres and Malcolm C. Little, Jr., both of legal age, married, the first a Mexican citizen, an accountant and a resident of Nogales, Sonora, and

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

the second an American citizen, an attorney, a resident of Nogales, Arizona, United States of America, and temporarily in this city. Said parties, who are personally known to the undersigned Notary, to which he certifies and likewise that in my opinion they are legally competent to contract and obligate themselves, declared: that they hereby organize a sociedad anonima (limited liability corporation), as a private enterprise, in accordance with article 166 of the Commercial Code, subject to the following clauses:

First: The name of the company is "Mina Del Refugio, Sociedad Anonima."

Second: The principal domicile of the company is the city of Nogales, State of Sonora, Republic of Mexico. The Board of Directors is expressly authorized to establish branches and agencies and to designate conventional domiciles in any other part of the Republic of Mexico, or in foreign countries, and in such case, to hold its meetings at such branches or agencies.

Third: The purpose of the company is: a) The acquisition, exploitation and alienation of mining claims and concessions. b) The acquisition, exploitation and alienation of industrial plants and installations, buildings and lands necessary or convenient to the foregoing purpose. c) The organization of other companies and the participation therein in consideration for the transfer of properties by any legal title, whether such companies

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

be partnerships or stock companies. d) Any undertaking, civil or mercantile, relating or accessory to the foregoing, and in general the execution of all contracts and the performance of all acts necessary or convenient to the realization by the company of said purposes.

Fourth: The duration of the company is fifty years, to terminate December 31, 1982, the first corporate year to be from the date of these presents to December 31, 1932.

Fifth: The capital of the company is Five Thousand Pesos of Mexican silver (\$5,000.00), fully subscribed as follows: Mr. Enrique Torres subscribes \$4,997.00 pesos and Mr. Malcolm C. Little, Jr., three pesos, which they pay for in cash, Mr. Little obligating himself to transfer one share each to Messrs. Douglas Cather and William J. Mitchell.

Sixth: The capital stock is divided into 5000 shares each of the par value of one peso, which shares shall be represented by certificates comprising one or more shares. Said certificate shall be issued in the name of the owner, or to bearer, as each stockholder may elect, and shall be delivered to the incorporators as subscriptions are paid in proportion to their subscriptions, or to persons by them designated by letter addressed to the President.

Seventh: For the management of the affairs of the company there will be a Board of Directors, consisting of not fewer than three nor more than

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

seven members, who from among their members shall elect a President, a Vice-President, a Secretary and a Treasurer. One person may hold two offices. The Board of Directors shall have the following powers:

a) To carry out all operations, acts and contracts required by the purposes of the company, including the organization of other companies, either partnerships or stock companies; to sell, pledge or otherwise encumber or alienate corporate assets, to buy subject to term payments and to enter into credit operations.

b) To represent the company, or cause it to be represented, in and out of court, with full powers, even those by law requiring a special grant of authority, and to this end to authorize such powers of attorney that it may deem necessary.

c) Freely to name and remove attorneys in fact and officers and employees of the company, and to fix their compensation.

d) To fix the representative and executive powers of the President.

e) All other powers conferred by the laws of the land and by the charter of the company, not expressly reserved to the stockholders.

Eighth: There may be a manager, who will exercise the powers to him hereafter granted by the Board of Directors.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Ninth: There also shall be a comisario appointed by the stockholders, who shall exercise the powers by law to him granted, to continue in office one year.

Tenth: The Board shall be appointed at regular annual meetings of stockholders, or sooner, in case of a vacancy by death, resignation or removal, but until appointments are made by the stockholders, the remaining members of the board in meeting assembled, may name a substitute for director or directors temporarily or permanently disqualified.

Eleventh: The reserve fund shall be made up of five per cent of the net profits, up to twenty per cent of the capital stock. The by-laws may provide for one or more additional reserve funds.

Twelfth: Profits shall be distributed annually proportionately to the corporate shares of stock, and losses shall be born in like manner by the stockholders to the amount of the capital stock subscribed and not paid. The Board of Directors may, however, declare dividends before the termination of the corporate year, if they are derived from profits actually realized.

Thirteenth: The incorporators of the company as such do not reserve any participation in the profits.

Fourteenth: The company shall be dissolved prior to the expiration of its term: a) by resolution of the stockholders; b) because of bankruptcy.

Fifteenth: In case of liquidation a general meet-

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

ing of stockholders shall determine, as it may see fit, the rules governing the liquidation, and in the absence of such rules, the rules provided in the Commercial Code for stock companies shall be applied.

When the company enters into liquidation, the powers of the Board of Directors and of the Manager shall terminate, and the liquidator or liquidators shall be subrogated thereto.

Sixteenth: The by-laws of the company shall adopt rules for the calling and holding of meetings of the Board of Directors and of regular and special meetings of stockholders, as to what shall constitute a quorum, a majority, to fix the powers of the officers and, in general, to govern all those matters relating to the conduct and management of the company, its dissolution and liquidation, not provided for in these presents. Therefore, the organizers of the company at this time exhibit to me the by-laws by them approved for insertion herein.

Seventeenth: Every foreigner who in the organization of this company, or at any time subsequent thereto, acquires an interest or participation in the company, shall by such act be considered a Mexican, with respect to such interest or participation, and it shall be understood that he agrees not to invoke the protection of his own government, under penalty, in case he fails in his agreement, of forfeiting such interest or participation to the Mexican Nation. This clause shall be inserted in the stock certificates.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Provisional: a) For the present and until the stockholders otherwise decide, the Board of Directors shall consist of the following persons: Enrique Torres, C. Douglas Cather and Malcolm C. Little, Jr., the first as President and Treasurer, the second as Vice-President and the third as Secretary. b) Mr. William J. Mitchell, is named comisario for the first year, and until his successor is elected.

By-Laws
Capital Stock

Article 1: The shares shall be issued in the name of the owner, or to bearer, as the stockholder may elect. Stock certificates representing shares shall be taken from stock books having stubs, they shall be numbered in sequence from one on, shall be signed by the President and Secretary of the company, or by their alternates, and shall comply with the requirements 179 of the Commercial Code. One certificate may represent one or more shares, as the party interested may choose.

Article 2: The ownership, assignment and the modification or transfer of ownership of shares, and all other matters relating thereto, are subject to the provisions of articles 181, 182 and other relevant provisions of the Commercial Code.

Article 3: The company shall recognize as stockholders only the bearers of stock certificates, with respect to registered stock, except in case of court order to the contrary, issued by a competent judge.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Article 4: Every stockholder, by the mere fact of so being, submits himself and is submitted to the provisions of the charter and by-laws of the company, and to resolutions legally approved at meetings of stockholders and of the Board of Directors.

Article 5: All shares confer upon their owners the same rights and impose the same obligations in matters relating to the attendance and voting at meetings of stockholders, the participation in profits, the assessment of losses to the amount of the par value of each share subscribed and not paid for, and relating to rights and liabilities recited in the charter, in the by-laws and in the law.

Article 6: On petition of the owner and at his expense stock certificates may be changed for others of different denomination, on condition that the new certificates shall represent the same number of shares as the old certificates given in exchange. The cancellation and issuance of new certificates shall not be made on the stubs of certificates.

Article 7: When because of destruction or loss a petition is filed asking that a certificate be replaced, the President of the Board of Directors shall publish notice of such petition in the Official Paper of the State. If after fifteen days from publication no one objects, a duplicate certificate shall be issued, the cost of the publication and other costs to be paid by the party interested.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

General Meetings of Stockholders

Article 8: General meetings of stockholders shall be regular and special.

Article 9: The purpose of regular meetings shall be to discuss, approve or modify the trial balance corresponding to corporate year, after receiving the comisario's report; to elect during each corporate year members of the Board of Directors and the comisario and to fix their compensation, in case it is deemed necessary to fix salaries, and to decide other matters appearing in the Order of Business.

Article 10: Regular meetings shall be held annually, at the domicile of the company during the month of January, at the place designated in the notice thereof. This notice shall be published once only in the Official Bulletin of the State of Sonora and, in the absence of such paper, in any other paper of the State at least eight days in advance of the date of the meeting, in the notice stating the time and place of the meeting and the Order of Business.

Article 11: If the Board of Directors does not call a regular meeting when due, the comisario may in its stead do so, and the meeting may be held even after the month of January with the same legal effect.

Article 12: The purpose of special meetings shall be the removal or appointment of one or more members of the Board of Directors and of the Comisario, and any other matters within the powers of a stockholder's meeting.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Article 13: The Board of Directors, the comisario or any other officer of the company may call a special meeting of stockholders whenever deemed necessary, observing the formalities required for regular meetings; and the Board of Directors must call a special meeting when so required in writing by one or more stockholders that represent at least twenty-five per cent of the capital stock, on condition that the petition be accompanied by the Order of Business.

Article 14: If the Board of Directors does not approve such petition, or fails to publish notice of the meeting, including therein the full Order of Business presented by the stockholder, or stockholders, any one of them may do so through the Civil Court of First Instance of the domicile of the company.

Article 15: To be admitted to meetings of stockholders it shall be sufficient to present one or more certificates of stock.

Article 16: When stockholders present at a meeting represent all of the capital stock, notice thereof shall not be required, and neither shall notice be required if for any cause the meeting is adjourned to be continued at a different time. In either of said cases, it shall so appear in the minutes of the meeting.

Article 17: The Secretary, before the meeting is installed, shall compute the shares represented and shall make a list of the persons present. This

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

list shall be inserted in the minutes and shall be signed by the Secretary.

Article 18: Stockholders may appear at meetings in person, or by proxy in the form of a general or special power, in the latter case a letter-power signed by the stockholder shall be sufficient.

Article 19: To hold regular or special meetings of stockholders the representation of a majority of the capital stock shall be necessary. In case of Article 206 of the Commercial Code the representation indicated shall not be necessary in response to the first or second call. Meetings may also be held with the stockholders present, regardless of the number of shares represented, even less than one-half of the capital stock, when the meeting did not take place because of lack of a quorum and had to be held pursuant to a second call; the same shall apply in case a general meeting is convened with the required quorum, as provided in the by-laws, and one or more of the stockholders leave before the meeting is over, or the matters before the meeting are not finished and the meeting is adjourned to a different time and place.

Article 20: Once it appears that a quorum is present, the President shall declare the meeting legally convened and shall proceed with the Order of Business, the President presiding.

Article 21: Voting shall be by ballot, unless some one requests that it be by persons.

Article 22: In meetings of stockholders each share shall be computed as one vote.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Article 23: At meetings a majority shall consist of one share in excess of one-half of the shares represented.

Article 24: A general meeting of stockholders has full powers to decide all matters pertaining to the affairs of the company, and its decisions shall be obligatory on all stockholders, even those absent or dissenting.

Article 25: The President of the Board shall preside at meetings of stockholders, and, in his absence, the Vice-President, and in the latter's absence the person appointed by the meeting.

Article 26: The Secretary of the Board shall act as Secretary at meetings of stockholders, and in his absence the person designated by the meeting.

Article 27: The Secretary shall prepare minutes of each meeting, and shall prepare a record thereof, which shall contain: a copy of the minutes; a copy of the paper in which notice was published; the proxies presented, or extracts of general powers presented signed by the Secretary, and other documents and petitions presented to the meeting. The minutes shall be signed by all present, and the copy by the Secretary.

Article 28: If for any cause a meeting legally called is not held, a minute thereof shall be made showing such fact and the cause thereof, and a record shall be made as provided in the preceding article.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Board of Directors

Article 29: The Board of Directors shall exercise the powers set out in the articles of incorporation. The corporate name shall be used by the person serving as president.

Article 30: Members of the Board of Directors to qualify shall deposit with the treasury of the Company one share of the corporate stock.

Article 31: The directors and officers shall continue in office during the period for which elected, or until their successors are elected.

Article 32: When one or more positions on the Board are vacant, the director or directors remaining shall provisionally appoint a substitute or substitutes, who shall serve until the incumbent returns, or others are elected at the next succeeding meeting of stockholders.

Article 33: Meetings of the Board of Directors shall be regular and special, the first to be held without special call at eleven a.m. on the first Monday of each month at No. 20, Calle Elias, in Nogales, Sonora, or at the time and place designated by the Board. Special meetings shall be held when called by the President or Secretary of the Board, or on petition of any of the directors, by sending special notice by registred mail to the domiciles of the directors, therein stating the hour, date and place of the meeting and the Order of Business. Notice shall not be required when all the directors are present. Meetings of the Board may be held in

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

foreign countries where the Company has established an office, branch or agency.

Article 34: Members of the Board of Directors shall be elected by majority vote at meetings of stockholders. The President, and in his absence the Vice-President, shall preside at meetings of the Board, and, in the absence of both, the member designated by the Board.

Article 35: To hold a meeting of the Board the presence of a majority of its members is necessary; resolutions shall be by majority vote, and in case of a tie, the vote of the presiding officer shall decide.

Article 36: Minutes signed by the President and Secretary shall be prepared of all meetings of the Board. Also, when for any cause a meeting cannot be held, all the members present shall sign the minutes.

Comisario

Article 37: The qualifications of the comisario are the same as those of directors, as set forth in article 30 of the by-laws.

Article 38: In addition to the elected comisario the meeting of stockholders may appoint one or more alternates, when deemed necessary.

The President

Article 39: The President shall have the following powers:

1. To represent the Company in and out of court, and in addition thereto to exercise the powers conferred by law and these by-laws.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

2. To represent the Company before all political, administrative and judicial authorities, federal, local or municipal, in all matters, even those requiring a special grant of authority, in original actions, their incidents or recourses, including the power to make bids and counter bids, to dismiss suits, settle by compromise or arbitration, to ask and answer interrogatories, disqualify, receive payment and acknowledge signatures and documents.

3. To locate, apply for, purchase or otherwise acquire mining claims and concessions; to manage and lease the properties of the Company; to enter into contracts and perform all civil and mercantile acts required by the ordinary conduct of the business; to execute such public and private documents as may be necessary in the premises; but he cannot execute negotiable instruments, bonds, or obtain loans, or alienate or encumber real property without the authority so to do of the Board of Directors or of the stockholders.

4. To grant general or special judicial powers of attorney, with power of substitution as a whole or in part, and revoke powers, and to execute all kinds of instruments, in exercise of the foregoing powers.

Vice-President

Article 40: The Vice-President shall exercise all the powers of the President in case of the latter's absence or incapacity.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

Manager

Article 41: The Board of Directors may freely appoint and remove the Manager, who shall have the powers conferred in the articles of incorporation, the Commercial Code and resolutions adopted by the Board of Directors.

Secretary and Treasurer

Article 42: The Secretary and Treasurer of the Company, in addition to the powers conferred by the by-laws, shall have in their charge: the first, the books, stocks certificates and minutes; and the second, the accounting and corporate funds, and both of them shall exercise the powers by law conferred.

Dividends

Article 43: An annual inventory shall be made of the properties and operations of the company.

Article 44: Net profits realized shall be distributed as follows: five per cent shall be applied to the reserve fund, until such fund equals one-fifth of the capital stock; the amounts voted by the stockholders to constitute other funds; and the rest shall be divided, when so decided by the Board of Directors, among the stockholders in proportion to the number of their shares.

Article 45: Notice of the distribution of profits shall be sent to each stockholder. Dividends not

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

collected within five years from the date of the notice shall revert to the company.

Dissolution and Liquidation

Article 46: The dissolution and liquidation of the Company shall be made in the manner provided in the articles of incorporation. During the period of liquidation the stockholders shall retain full powers over the Company, observing in relation to meetings and majorities the provisions of these by-laws.

General Provisions

Article 47: In all cases in which in accordance with the law, the articles of incorporation and these by-laws notice is to be served on a stockholder by publication in the Official Bulletin, publication may be omitted if the stockholder in writing admits knowledge of the notice, or voluntarily complies with or performs the act referred to in the respective resolution.

The incorporators presented to the undersigned notary a permit issued by the department of Foreign Affairs, which is as follows:

“A marginal seal as follows: Executive Federal Power.—Mexico.—United Mexican States.—Secretary of Foreign Affairs.—Diplomatic Department.—No. 2243.—Stamps to the value of twenty pesos duly cancelled.—In the center.—The Chief Clerk of Foreign Affairs Certifies:—That a petition was received from Messrs. Enrique Torres and Malcolm

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

C. Little, Jr., advising that they proposed to organize a sociedad anonima (limited liability corporation), for mining purposes, in accordance with the laws of the land, with legal domicile therein, to be called "Mina Del Refugio, S. A.," and in compliance with the latter portion of article 2 of the Regulations of the Organic Law of Section I of article 27 of the Constitution, they requested that this Secretary grant a permit to include in the articles of incorporation of the Company the following clause, as provided in said article: "Every foreigner who, at the time of its incorporation or any later time, acquires an interest or participation in the company shall be considered by such act to become a Mexican, with respect to said interest or participation, and it shall be understood that he agrees not to invoke the protection of his government, under penalty, in case he fails in his agreement, of forfeiting said interest or participation to the Mexican Nation." The above clause shall be printed or engraved on the stock certificates in addition to the data required by article 179 of the Commercial Code, in compliance with article 4 of said Regulations, to enable foreigners legally to acquire the stock; wherefore this Secretary decided to grant, and does hereby grant, to said persons the necessary authority to include said insertions in the articles of incorporation and in the stock certificates subject to the conditions and restrictions established in articles 1 and 3 of said Organic Law

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

of Fraction I of article 27 of the Constitution, article 7 of said Regulations, Section IV of said article 27 of the Constitution and other relevant legal provisions. This permit must be inserted in full in the articles of incorporation of the Company in compliance with article 3 of said Regulations. On application of the interested parties these presents are issued in Mexico City, October 27, 1931. Signed M. E. Otalera, Chief Clerk. I, the Notary, certify that the foregoing is a true and correct copy of the original, which I have before me and have read and attached to the Appendix of this Book, in a folder bearing the same number as this instrument, under letter "A."

In relation to the payment of income tax the parties declare: Mr. Torres that his tax is paid, and Mr. Little, that he is not subject to such tax.

These presents having been read to the contracting parties, and they understanding the legal value and effect thereof, likewise their obligation to record same, they agreed to the contents thereof and ratified the same in its entirety, and signed in the presence of the Notary and of the witnesses hereto, to all of which I certify:—Signed: Enrique Torres.—Malcolm C. Little, Jr.—Alfredo H. Hernandez.—Cristobal Espinosa.—A. Espinosa.

I authorize these presents the 7th day of January, 1932, and attach a statement of the stamp tax to the respective Appendix and folder, and letter "B,"

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

I certify. Signed: Arsenio Espinosa,—Notarial Seal.

In the margin: Notarial seal and stamps to the value of \$5.50 of national currency, duly cancelled.—In the center: Citizen Chief of the Federal Tax Office, Present.—On the 5th day of the current month documento No. 644, contained on 12 sheets of Book No. 12 of the Protocol of the Notarial Office No. 6, was executed by Messrs. Enrique Torres and Malcolm C. Little, Jr., containing the articles of incorporation of mining company called "Mina Del Refugio, Sociedad Anonima," with a capital stock of \$5,000.00 pesos of Mexican silver, which, in my opinion, is taxable at the rate of one peso for each 1000 pesos or fraction thereof, in accordance with section 54, subsection I of the Schedule of the Stamp Law now in force, which, with the additional tax, amounts to \$5.50. In regard to income tax Mr. Torres declares that his tax has been paid and Mr. Little states that he is not subject thereto.—Nogales, Sonora, January 6, 1932. Signed: Arsenio Espinosa, Notary Public No. 6.

The undersigned Chief of the Federal Tax Office certifies: that on this day there were attached to and cancelled on this memorandum the stamps referred to in the preceding liquidation, made under the responsibility of the notary signing same. Nogales, Sonora, January 7, 1932.—Signed: E. Tamez, Chief of the Federal Tax Office.—An official seal.

Plaintiff's Pre-Trial Exhibit No. 46—(Cont.)

This Second Certified Copy Was Taken From the Original on Application and for the Use of an Interested Party. It is Contained on Nine Sheets, Compared and Corrected, Bearing the Stamps by Law Required, Duly Cancelled. Hermosillo, Sonora, October 18, 1950.—I certify. Signed: Armando V. Escalante, Director of the General Notarial Archives. An official seal.

State of Arizona,
County of Santa Cruz—ss.

Malcolm C. Little, having first been sworn, on oath deposes and says: I am a resident of Nogales, Arizona, an attorney at law, also admitted to practice in the State of Sonora, Mexico; I know the Spanish and English languages; I have made a translation from Spanish to English of the articles of incorporation and by-laws of "Mina Del Refugio, S. A.," a Mexican corporation, and to my best knowledge and belief the foregoing is a true and correct translation thereof.

/s/ M. C. LITTLE.

Sworn to and subscribed before me, a Notary Public in and for said County and State, this 4th day of November, 1950.

/s/ DOLORES W. LOPEZ,
Notary Public.

My commission expires December 5, 1951.

Certificado No. **1**

No. de Acciones 1249

Accionista Enrique
Jones

Fecha Enero 11 de 1932

Recibi

Enrique Jones

162

Certificado No. **2**

No. de Acciones 1249

Accionista Enrique
Jones

Fecha Enero 11 de 1932

Recibi

Enrique Jones

163

Certificado No. **3**

No. de Acciones 1249

Accionista Enrique
Jones

Fecha Enero 11 de 1932

Recibi

Enrique Jones

164

Certificado No. **4**

No. de Acciones 1249

Accionista Enrique
Jones

Fecha Enero 11 de 1932

Recibi

Enrique Jones

165

Certificado No. 5No. de Acciones unaAccionista Enrique
JonesFecha Enero 11 de 1932Recibi Enrique JonesCertificado No. 6No. de Acciones UnaAccionista M. C. Little Jr.Fecha Enero 11 de 1932Recibi Malcolm LittleCertificado No. 7No. de Acciones UnaAccionista M. C. Little Jr.Fecha Enero 11 de 1932Recibi Malcolm LittleCertificado No. 8No. de Acciones UnaAccionista M. C. Little Jr.Fecha Enero 11 de 1932Recibi Malcolm Little

Certificado No. 9No. de Acciones 974

Accionista _____

Clepton R. JonesFecha Marzo 22 de 1948

Recibi _____

Certificado No. 10No. de Acciones 974

Accionista _____

John C. HigginsFecha Marzo 22 de 1948

Recibi _____

Certificado No. 11No. de Acciones 250

Accionista _____

Walter M. WellsFecha Marzo 22 de 1948

Recibi _____

Certificado No. 12No. de Acciones 250

Accionista _____

Mrs Diana W. ScottFecha Marzo 22 de 1948

Recibi _____

Certificado No. 13No. de Acciones 25

Accionista _____

Mrs Diana W. Scott

Fecha Marzo 21 de 1948

Recibi _____

CH 31

Certificado No. 15No. de Acciones 31

Accionista _____

John C. Higgins
Fecha March 22 1948Certificado No. 14No. de Acciones 25

Accionista _____

Mrs Diana W. Scott

Fecha Marzo 22 de 1948

Recibi _____

J. J. Jones 1180

Certificado No. 16No. de Acciones 1180

Accionista _____

Clayton R Jones
Fecha March 22, '48

Certificado No. 17No. de Acciones 19Accionista Thomson E HarrisFecha March 22, 1948

Recibi _____

Certificado No. 18No. de Acciones 13

Accionista _____

R. E Harris

Fecha March 22, 1948

Recibi _____

Certificado No. 19No. de Acciones 6

Accionista _____

R. B. Harris

Fecha March 22, 48

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PLAINTIFF'S PRE-TRIAL EXHIBIT No. 51

EXHIBIT 51

Organization Expense

Date 1944	Description	Posting Ref.	Charges	Account No. 2-2	
				Credits	Balance
Aug. 31		CD1	\$5.00		
Sept. 30		CD1	11.68		
Oct. 31		CD1	669.96		
Nov. 30		CR1		\$175.03	
Nov. 30		CD2	22.12		
Dec. 31		CD2	15.54		\$549.27
1945					
Jan. 31		CD3	1,519.50		
Feb. 28		CD3	7.27		
Mar. 31		CD4	4.60		
Apr. 30		CD4	8.05		
May 31		CD5	19.50		
June 30		CD5	126.21		
July 31		CD6	3.00		
Aug. 31		CD6	10.94		
Sept. 30		CD7	3.00		
Oct. 31		CD7	4.00		
Nov. 30		CD8	4.00		
Dec. 31		CD8	4.00		
Dec. 31		J2		89.33	2,174.01
1946					
June 30		CD13	8.82		2,182.83

Exploration and Development Expense

Date 1944	Description	Posting Ref.	Charges	Account No. 2-1	
				Credits	Balance
Aug. 31	Engineering Fees ..	CD1	\$950.00		
Aug. 31	Other Dev. Exp.	CD1	136.41		
Sept. 30	Engineering Fees ..	CD1	300.00		
Sept. 30	Other Dev. Exp.	J1	100.00		
Sept. 30	Other Dev. Exp.	CD1	1,405.94		
Oct. 31	Other Dev. Exp.	CD1	45.60		
Nov. 30	Other Dev. Exp.	CD2	43.31		
Dec. 31	Engineering Fees ..	CD2	750.00		
Dec. 31	Other Dev. Exp.	J1	7,728.08		
Dec. 31	Other Dev. Exp.	CD2	450.24		\$11,909.58

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Jan. 31	Other Dev. Exp.	CD3	\$185.35		
Feb. 28	Other Dev. Exp.	CR1		\$175.03	
Feb. 28	Other Dev. Exp.	CD3	12.81		
Mar. 31	Other Dev. Exp.	CD4	96.75		
Apr. 30	Other Dev. Exp.	CD4	54.35		
May 31	Engineering Fees ..	CD5	925.00		
May 31	Other Dev. Exp.	CD5	499.97		
June 30	Other Dev. Exp.	CD5	797.57		
July 31	Other Dev. Exp.	CR2		161.12	
July 31	Other Dev. Exp.	CD6	948.14		
Aug. 31	Other Dev. Exp.	CD6	16.64		
Sept. 30	Engineering Fees ..	CD7	1,785.00		
Sept. 30	Other Dev. Exp.	CD7	610.38		
Oct. 31	Other Dev. Exp.	CD7	301.34		
Nov. 30	Other Dev. Exp.	CR3		15.08	
Nov. 30	Other Dev. Exp.	CD8	834.26		
Dec. 31	Other Dev. Exp.	CR3		74.52	
Dec. 31	Other Dev. Exp.	CD8	222.04		
Dec. 31	Other Dev. Exp.	J2	89.33		
Dec. 31	Other Dev. Exp.	J2	41,220.16		
Dec. 31	Other Dev. Exp.	J3		883.11	\$59,199.81
1946					
Jan. 31	Other Dev. Exp.	CR3		26.34	
Feb. 28	Other Dev. Exp.	CR3		15.65	
Jan. 31	Other Dev. Exp.	CD9	112.24		
Feb. 28	Other Dev. Exp.	CD9	500.54		
Mar. 31	Other Dev. Exp.	CR4		11.04	
Mar. 31	Engineering Fees ..	CD10	1,450.00		
Mar. 31	Other Dev. Exp.	CD10	937.00		
Apr. 30	Engineering Fees ..	CD11	1,626.50		
Apr. 30	Other Dev. Exp.	CD11	1,061.02		
May 31	Other Dev. Exp.	CD12	266.38		
June 30	Other Dev. Exp.	CD13	163.67		
July 31	Other Dev. Exp.	CD14	156.49		
Aug. 31	Other Dev. Exp.	CD15	117.14		
Sept. 30	Engineering Fees ..	CD16	1,000.00		
Sept. 30	Other Dev. Exp.	CD16	134.35		
Oct. 31	Other Dev. Exp.	CD17	403.43		
Nov. 30	Engineering Fees ..	CD18	1,500.00		
Nov. 30	Other Dev. Exp.	CD18	311.15		
Dec. 31	Other Dev. Exp.	CR6		87.52	
Dec. 31	Other Dev. Exp.	CD19	324.08		
Dec. 31		J4	59,437.36		
Dec. 31		J4		2,973.08	
Dec. 31		J3		1,323.72	124,263.81

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Date	Description	Posting Ref.	Charges	Credits	Balance
1947					
Jan. 31	Engineering Fees ..	CD20	\$475.00		
Jan. 31	Other Dev. Exp.	CD20	427.41		
Feb. 28	Engineering Fees ..	CD21	2,500.00		
Feb. 28	Other Dev. Exp.	CD21	76.34		
July 31		J4		\$475.00	\$127,267.56
Dec. 31		J5		503.48	
Dec. 31		J5		1,718.76	
Dec. 31		J5	16.81		
Dec. 31		J6		4.25	
Dec. 31		J6		70.34	
Dec. 31		J6		90.84	
Dec. 31		J7	2,415.62		127,312.32

Trucks and Tractors

Date	Description	Posting Ref.	Charges	Credits	Balance
1944					
Nov. 30		CD2	\$96.37		\$96.37
1945					
May 31		CD5	250.00		
June 30		CD5	18.12		
July 31		CD6	.70		
Aug. 31		CD6	1,471.76		
Sept. 30		CD7	1,500.00		
Oct. 31		CD7	109.36		
Nov. 30		CD8	8.16		
Dec. 31		J2	228.40		3,682.87
1946					
Jan. 31		CD9	225.46		
Feb. 28		CD9	947.05		
Mar. 31		CD10	15.50		
Apr. 30		CD11	286.34		
May 31		CD12	500.00		
June 30		CD13	2,208.88		
July 31		CR5		\$11.90	
July 31		CD14	791.86		
Aug. 31		CD15	51.20		
Sept. 30		CD16	778.12		
Oct. 31		CD17	163.52		
Nov. 30		CR5		9.15	
Nov. 30		CD18	100.00		
Dec. 31		CD19	35.78		9,765.53
Dec. 31		J5	58.39		
Dec. 31		J5		110.72	
Dec. 31		J7		228.40	9,484.80

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Office Equipment

				Account No. 1-6	
Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Sept. 30		CD7	\$60.00		
1944					
Dec. 31	In Mexican office..	J1	40.82		
1945					
Dec. 31		J2	255.88		\$356.70
1947					
July 31		J4	134.23		490.93
Dec. 31		J7	4,235.88		4,726.81

Camp

				Account No. 1-2	
Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Sept. 30		CD7	\$4,020.50		\$4,020.50

Water System

				Account No. 1-2	
Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Sept. 30		CD7	\$905.13		\$905.13
1947					
Jan. 31		CD20	551.89		
Feb. 28		CD21	1,538.19		2,995.21
Sept. 30		CD27	4,387.12		7,382.33

Mill Building

				Account No. 1-3	
Date	Description	Posting Ref.	Charges	Credits	Balance
1946					
Apr. 30		CD11	\$2,271.76		
May 31		CD12	1,969.93		
July 31		CD14	1,245.00		
Sept. 30		CD16	350.00		
Dec. 31		J3	441.24		\$6,277.93
Dec. 31		J5	503.48		
Dec. 31		J6	70.34		6,851.75

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Mine Equipment

Date	Description	Posting Ref.	Charges	Account No. 1-4	
				Credits	Balance
1944					
Sept. 30		CD1	\$437.06		
Oct. 31		CD1	4,615.13		
Dec. 31		CD2	1.73		\$5,053.92
1945					
Feb. 28		CD3	167.50		
Mar. 31		CD4	26.77		
Apr. 30		CD4	12.12		
May 31		CD5	1,270.27		
June 30		CD5	9.33		
July 31		CR2		\$1.72	
July 31		CD6	161.10		
Aug. 31		CD6	500.00		
Sept. 30		CD7	4,410.87		
Oct. 31		CD7	25.45		
Nov. 30		CD8	161.50		
Dec. 30		J2	1.35		11,798.46
1946					
Jan. 31		CD9	1.32		
Feb. 28		CD9	727.96		
Mar. 31		CD10	1,645.39		
Apr. 30		CD11	125.97		
May 31		CR4		18.21	
May 31		CD12	10.91		
June 30		CD13	249.45		
July 31		CD12	69.70		
Aug. 31		CD15	20.88		
Sept. 30		CD16	394.23		
Oct. 31		CD17	48.36		
Dec. 31		CD19	65.84		15,140.26
1947					
Jan. 31		CR6		27.05	
Jan. 31		CD20	12.40		
Feb. 28		CR6		1,886.62	
Apr. 30		CD23	2,257.79		
Oct. 31		CD28	1,053.00		16,549.78
Dec. 31		J5		531.50	
Dec. 31		J7	758.06		16,776.34

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Mill Equipment

		Account No. 1-5			
Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Sept. 30		CD7	\$540.90		\$540.90
1946					
Jan. 31		CD9	1,500.00		
Mar. 31		CD10	5,515.65		
Apr. 30		CD11	2,000.00		
May 31		CD12	10,068.50		
June 30		CD13	3,544.01		
July 31		CR5		\$7.71	
July 31		CD14	13,083.45		
Aug. 31		CD15	2,637.21		
Sept. 30		CD16	3,554.62		
Oct. 31		CD17	1,974.10		
Nov. 30		CD18	1,784.68		
Dec. 31		CD19	1,657.80		
Dec. 31		J3	882.48		48,735.69
1947					
Jan. 31		CD20	1,743.58		
Feb. 28		CD21	465.88		
Mar. 31		CD22	283.25		
July 31		CD25	11.38		
Aug. 31		CD26	113.24		
July 31		J4	475.00		51,828.02
Dec. 31		J5	36.32		
Dec. 31		J5	110.72		
Dec. 31		J7	2,531.92		54,506.98

Advances Clayton R. Jones

		Account No. 5-5			
Date	Description	Posting Ref.	Charges	Credits	Balance
1944					
Aug. 9		J1			\$1,000.00
Aug. 25		J1		4,000.00	
Aug. 31		CR1		1,000.00	
Sept. 30		CR1		3,000.00	
Sept. 30		J1		100.00	
Nov. 30		CR1		5,000.00	
Nov. 30		J1	\$515.50	14,100.00	

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Date	Description	Posting Ref.	Charges	Credits	Balance
1945					
Jan. 31		CR1		\$5,000.00	
Mar. 31		CR1		1,500.00	
Apr. 30		CR1		2,500.00	
May 31		CR2		3,000.00	
June 30		CR2		2,500.00	
July 31		CR2		3,500.00	
Aug. 31		CR2		6,000.00	
Sept. 30		CR2		10,000.00	
Oct. 31		CR2		2,500.00	
Nov. 30		CR3		1,500.00	
Dec. 31		CR3		3,000.00	
Dec. 31		J2	\$2,848.55	55,100.00	
1946					
Jan. 31		CR3		1,000.00	
Feb. 28		CR3		3,500.00	
Mar. 31		CR4		6,000.00	
Mar. 31		CD10	2,000.00		
Apr. 30		CR4		12,000.00	
May 31		CR4		5,000.00	
June 30		CR4		9,000.00	
July 31		CR5		8,000.00	
Aug. 31		CR5		9,500.00	
Sept. 30		CR5		7,000.00	
Oct. 31		CR5		5,000.00	
Nov. 30		CR5		2,000.00	
Dec. 31		CR6		5,000.00	
1947					
Jan. 31		CR6		5,000.00	
Feb. 28		CR6		4,000.00	
Mar. 31		CR6		3,000.00	
Apr. 30		CR7		2,000.00	
May 31		CR7		4,500.00	
July 31		CR7		1,000.00	
Aug. 31		CR7		7,000.00	
Sept. 30		CR8		2,000.00	
Dec. 31		CR8		1,000.00	
Dec. 31		J6	154,123.85		

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Advances John C. Higgins

Account No. 5-5

Date	Description	Posting Ref.	Charges	Credits	Balance
1944					
Aug. 25		J1		\$5,006.50	
Aug. 31		CR1		1,000.00	
Sept. 31		CR1		3,000.00	
Nov. 30		CR1		5,000.00	
Nov. 30		J1	\$515.50	14,006.50	
1945					
Jan. 31		CR1		3,000.00	
Feb. 28		CR1		500.00	
Mar. 31		CR1		2,500.00	
Apr. 30		CR1		2,000.00	
May 31		CR2		4,000.00	
June 30		CR2		4,000.00	
July 31		CR2		1,000.00	
Aug. 31		CR2		7,000.00	
Sept. 30		CR2		10,000.00	
Oct. 31		CR2		2,100.00	
Nov. 30		CR3		2,400.00	
Dec. 31		CR3		2,000.00	
Dec. 31		J2	2,848.56	54,506.50	
1946					
Jan. 31		CR3		5,000.00	
Mar. 31		CR4		6,500.00	
Mar. 31		CD10	2,000.00		
Apr. 30		CR4		7,500.00	
May 31		CR4		12,000.00	
June 30		CR4		6,000.00	
July 31		CR5		9,500.00	
Aug. 31		CR5		8,000.00	
Sept. 30		CR5		5,000.00	
Oct. 31		CR5		5,000.00	
Nov. 30		CR5		5,000.00	
Dec. 31		CR6		4,000.00	
1947					
Jan. 31		CR6		4,000.00	
Feb. 28		CR6		7,000.00	
Apr. 30		CR7		3,500.00	
May 31		CR7		2,500.00	
June 30		CR7		1,500.00	
July 31		CR7		500.00	
Aug. 31		CR7		5,500.00	
Sept. 30		CR8		6,000.00	
Oct. 31		CD28	1,000.00		
Dec. 31		CR8		1,000.00	
Dec. 31		J6	154,130.35		

Plaintiff's Pre-Trial Exhibit No. 51—(Cont.)

Advances D. E. Harris

Account No. 5-5

Date	Description	Posting Ref.	Charges	Credits	Balance
1944					
Sept. 30		CR1		\$3,000.00	
Dec. 31		J6	\$3,000.00		

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 52

June 30th, 1944.

Mr. Clayton R. Jones,
c/o W. J. Jones & Co., Inc.,
Board of Trade Building,
Portland, Oregon.

Dear Mr. Jones:

Subsequent to our conversation on the telephone yesterday, the following is a concise remise of the enterprise that I have in the State of Sonora, Mexico.

For the past several months I have been developing a property comprising approximately 72 acres and the time has come, due to conditions over which I have no control, that I must ask for outside financial help, for the following reasons.

When I first purchased the above-mentioned property, I had at my command the necessary moneys to carry on a program that I had mapped out and for that reason I went into the proposition on a larger scale than I would have had I not believed that I would have been able to carry it through to a successful conclusion. As I mentioned to you on the telephone.

I have approximately 6000 tons of ore definitely blocked that averages throughout \$22.00 a ton of which \$18.00 is in gold and the balance silver. In developing this ore we have reached a depth of approximately 250 feet on a 36 degree incline. On the 250 foot level, I have drifted approximately 135 feet, both ends of the drift in ore and the face of the vein material averages better than 6 ft. All of this development work has been on ore.

There is no doubt in anyone's mind from the geological history of the district but what this ore shoot will continue with depth. To tell you what that continuation in footage will amount to, it would be impossible at this time, but the history of the State of Sonora shows in this formation that 1,000 feet is not anticipating too much.

To give you a geological report would be possible but I am sure that an examination by an engineer, designated by yourself would expedite matters and at the same time satisfy you and your associates much more than I or anyone than I had write a report could do.

I need to put the property in operation, meaning milling, mining, approximately \$30,000.00, provided an engineer would recommend the same amount of development and tonnage to be milled a day that I have anticipated at this time.

The \$30,000.00 would be spent as follows:

I have a cash payment falling due of \$10,000.00. A further payment of \$25,000.00 to be paid out of 10% of the smelter returns. This \$25,000.00 to be paid over a period of four years with no minimum,

monthly or yearly payments, excepting that the property must be worked in a workmanlike manner taking into consideration things which over we would have no control, such as strikes, breakdowns and acts of God, etc.

Mr. Jones, I have been in the mining business a great many years and I say without fear of contradiction, that this property has as great a potentiality as it has ever been my privilege to have been associated with.

In conclusion, I have no partners, no commitments, no financial structure and with the exception that we must operate under a Mexican Corporation, you can write your own ticket, because Mr. Wells has assured me that I would be treated by you the same as he would treat me, which is as fine a recommendation as I would ask.

I have several thousand dollars worth of machinery in this district, also a 20 ton mill set-up at the property, excepting power. The property is six miles from Tonichi and Tonichi is the terminus of a branch of the Southern Pacific RR of Mexico, so our transportation facilities are of the best. Also labor is no problem as we are in the center of San Xavier mining district.

This is probably disjointed, as I have been dictating direct to a typewriter, so if there is any further information that you may wish you can reach me all of next week at this hotel.

There is only one thing that I must impress upon you, that is that time is the essence of any deal we might be able to make. Due to the fact that

I must make that payment within the next thirty days, but I feel sure that any Engineer you might send down with me would whole-heartedly pass upon the property. I want you to understand that I in no way would waste any time or moneys that you might have to pay for your examination.

With kindest personal regards, I remain

Very truly yours,

/s/ D. D KRODER.

P. S.

You spoke of the tax situation, I am sure that if you will look into the tax situation as it exists in Mexico, you will find that it is very advantageous to anyone doing business there and especially under the "Good Neighbor" policy. Also we receive the same price for gold as here in the States but silver is only 46c an ounce.

Again—

/s/ D. D. K.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 53
Mining Option

This Agreement Made this 31st day of July, 1944, between Daniel Kroder, First Party, and Clayton R. Jones and John C. Higgins, Second Parties, Witnesseth:

1. First party has an option for the purchase of the Tescalama group of mines consisting of four properties, located at La Baranco, Sonora, Mexico. Said option is given by the owner of said mines,

one Juan Robinson, and it provides in substance a purchase price of \$35,000, payable \$10,000 in cash upon the closing of the contract of purchase after examination of titles, and the payment of the balance of \$25,000 shall be made out of a ten per cent royalty on the net smelter returns on all ore, concentrates or bullion produced. No definite schedule of minimum payments is provided but the option does provide that all work on the property shall be done in a workman-like manner and that the total \$25,000 balance on the purchase price shall be paid within a period of four years from the signing of the contract. The option agreement also provides that in case the purchasers shall file on any properties adjacent to those of Mr. Robinson, and if the purchasers for any reason surrender the contract of purchase, such adjacent properties shall be assigned to Mr. Robinson. The option contract also provides that the purchasers have thirty days after the surrender of the contract in which to remove any equipment or any other improvements placed upon the property by the purchasers, except permanent improvements attached to the land.

2. First party hereby grants to second parties an option to purchase first party's aforesaid option agreement with said Robinson, such option of purchase hereby granted to be exercised on or before the termination of first party's option with the aforesaid Robinson. Second parties are to examine the aforesaid mining properties as promptly as is reasonably possible and shall exercise their option of purchase by notice to first party.

3. The terms of the option hereby granted are as follows: If second parties shall exercise their option to purchase they shall agree to provide the sum of \$35,000, \$10,000 thereof to constitute the payment of \$10,000 to be made to the aforesaid Robinson, such payment to be made upon examination and approval of the title to the property and upon the execution and delivery of a deed, in escrow or otherwise, covering the mining properties to a grantee designated by second parties. Second parties shall provide the balance of said \$35,000 as the same may be required for the purchase of such mining and milling equipment as the parties hereto may agree upon and for the payment of such salaries, wages and other expenses as may be required for the installation of the aforesaid equipment and the operation of the mining property. Second parties are to be under no obligation to provide any sums of money beyond the aforesaid \$35,000. If it shall develop that further money is required to put said property into operation, such additional funds shall be procured under such agreement as the parties hereto may then make.

4. Parties hereto contemplate the organization of a Mexican corporation to be named as grantee in the deed conveying said mining property and the \$35,000 provided by second parties hereto shall be in the form of a loan to said corporation represented by notes of the corporation and repayable within two years from their date, with interest at five per cent. Said notes shall be payable either

at or before their maturity before any dividends shall be declared by said corporation.

5. The stock of the aforesaid corporation shall be distributed one-third to first party and two-thirds to second parties.

6. First party agrees to devote all of his time to the management of the affairs of said corporation during a development period of four months and he shall receive therefor a salary of Three Hundred Dollars (\$300.00) per month. In case the parties shall desire to continue the arrangement with first party for his services after said initial period of four months it shall be under such agreement as to salary and terms as may be made by the parties hereto.

7. The deed of conveyance to be executed by the aforesaid Robinson shall also include a bill of sale to be joined in by said Robinson and first party hereto, transferring all of the mining and milling equipment, houses and other structures now on said mining premises.

/s/ DANIEL D. KRODER,
First Party.

/s/ JOHN C. HIGGINS,
Second Party.

/s/ CLAYTON R. JONES,
Second Party.

Witness:

/s/ MARGARET L. STEWART.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 54

Hotel Laval
Hermosillo, Sonora, Mexico

August 9, 1944.

Messrs. Clayton R. Jones and
John C. Higgins,
Portland, Oregon.

Dear Sirs:

Referring to that certain agreement dated July 31, 1944, and made between the undersigned, as Party of the First Part and yourselves as Parties of the Second Part, I hereby agree that this agreement shall be amended as follows:

In lieu of the participation of thirty-three and one-third per cent ($33\frac{1}{3}\%$) provided in the said agreement, I agree that my interest in the undertaking, should the option from Juan Robinson be exercised, shall be twenty (20%) per cent, which interest shall be divided, ten per cent (10%) to A. E. Johnson, of Tonichi, Sonora, Mexico, and ten per cent (10%) to myself.

All of the other terms of the above-mentioned agreement shall remain in full force and effect.

Yours very truly,

/s/ DANIEL D. KRODER.

Supplemental Agreement

The undersigned are parties to a written agreement dated July 31, 1944, as modified by a letter addressed to the undersigned Jones and Higgins by the undersigned Kroder and dated August 9, 1944.

The undersigned hereby agree that Section "6" of the aforesaid agreement dated July 31, 1944, shall be cancelled and that said Kroder is hereby released from his agreement to devote all of his time to the management of the affairs of the corporation provided for in the aforesaid agreement during a development period of four months, and said Jones and Higgins are hereby released from any obligation to provide for the payment of Three Hundred Dollars (\$300.00) per month to said Kroder for such services.

The cancellation of the aforesaid Section "6" of said agreement of July 31, 1944, and the release of the parties hereto from the obligations stated in said paragraph, shall not in any way release or affect the right of said Kroder under the aforesaid agreement of July 31 as modified by said Kroder's letter of August 9 to said Jones and Higgins to receive a 20% interest in the undertaking provided for in said agreements, said 20% interest to be divided 10% to said Kroder and 10% to A. E. Johnson; nor shall this supplemental agreement in any way modify or release any of the other terms of the contract represented by the aforesaid agreement dated July 31, 1944, as modified by the aforesaid letter of August 9, 1944.

Dated this 31st day of August, 1944.

/s/ CLAYTON R. JONES,

/s/ JOHN C. HIGGINS,

/s/ DANIEL D. KRODER.

Mining Option

[See pages 258 to 261 of this printed record.]

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 55

Trust Agreement

This Agreement of trusteeship between Clayton R. Jones and John C. Higgins, first parties, and D. E. Harris, second party, Witnesseth:

1. First parties are the principal parties in interest under that certain letter of option addressed to D. E. Harris, second party herein, and executed by Juan Robinson dated August 10, 1944, and relating to certain mining claims and properties located in the Municipio San Javier Estado De Sonora Republic of Mexico, said mining claims and properties being located near the town of La Barranca, Senora.

2. Second party herein, hereby declares that he negotiated the contract represented by the afore-said letter of option, as the agent and trustee of the first parties herein, and that all monies heretofore expended and advanced to comply with the terms of said letter of option and to carry on the exploration and development of the mining properties therein referred to, have been provided by the first parties herein, and that the second party herein has no interest in said letter of option or in the properties therein referred to, except as trustee and agent of the first parties herein.

3. It is contemplated between the parties hereto that a written agreement may hereafter be made, wherein and whereby the second party may acquire

Plaintiff's Pre-Trial Exhibit No. 55—(Continued)

an interest in said letter of option and in the mining properties therein referred to, and in the mining enterprise to be conducted by first parties herein in the exploration and development of said properties, but it is hereby agreed and declared that unless and until such written document shall be executed between the parties hereto, the second party shall have no interest in said option or in said properties or enterprise, and that second party's sole relationship thereto is and shall be that of agent and trustee for first parties herein.

Dated at Portland, Oregon this 1st day of September, 1944.

/s/ CLAYTON R. JONES,

/s/ JOHN C. HIGGINS,

/s/ D. E. HARRIS.

State of Oregon,
County of Multnomah—ss.

On this 1st day of September, 1944, before me, Margaret L. Stewart, a Notary Public in and for said State, personally appeared Clayton R. Jones, John C. Higgins and D. E. Harris, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes herein expressed.

In Witness Whereof, I have hereunto set my

Plaintiff's Pre-Trial Exhibit No. 55—(Continued)

hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] /s/ MARGARET L. STEWART,
Notary Public for Oregon,
Residing at Portland.

My commission expires Sept. 28, 1947.

Nogales, Arizona,
August 10, 1944.

Mr. D. E. Harris,

My dear Mr. Harris:

By means of this letter I obligate myself to sell to you, or other person or company that you will indicate to me, the following concession or exploitation of mine with minerals of gold and silver located in the Municipality of San Javier, State of Sonora, United States of Mexico.

1. "Tescalama," with 10 Claims, Title 89.980.
2. "Barranquena," 10 Claims, Title 94.140.
3. "Noche Buena," 9 Claims, Title 105.641.

Also, the right on the mine "Santa Ana," No. 1779, with 8 Claims, with minerals of gold and silver under the same conditions as above, and the houses, machinery and mining equipment that are on these properties, for a price of \$40,000 in money of these United States. This amount is to be paid as follows: \$1,000 which I have received from you which I hereby acknowledge; \$9,000 to be deposited by you

Plaintiff's Pre-Trial Exhibit No. 55—(Continued)

within fifteen days from this date at my disposal to the First National Bank of this city, with instructions that the amount be paid upon execution in the City of Hermosillo, Sonora, of the option and premise of sale as referred to in this letter.

After execution of this document, you will indicate to me the authorized person who is to take possession of the mineral lots described for exploitation for your benefit and for the working of, and everything that is necessary for the taking up of the minerals that are on the surface or for the finding of new deposits with the right to dispose of said minerals, and with the obligation on your part to give me the 10% of the net value upon liquidation of the said metals that are found in these said mines; which amounts will be applied on account of the price.

The \$30,000 remaining is to be paid by you in three installments in one, two and three years from this date, discounting from each installment the amount that you have given me during the year as a result of this participation.

Once the whole total has been paid of the said mines and rights, I obligate to give to you or the persons that you designate the definite deed on the said properties with satisfactory titles of possession.

It is understood for the net value of liquidation the amount that is to be deducted from the gross value that is to take place on each liquidation the following expenses only: duties, railroad expense,

Plaintiff's Pre-Trial Exhibit No. 55—(Continued)

and railroad charges, and as in your case if exportation is required, all expenses in conjunction therewith.

This option or promise of sale that is referred to in this letter is to be signed as soon as you obtain the permission from the Secretary of the Government of the Mexican Republic to do business in that country, and is to bear the clause and conditions appropriate in the case of contracts. In this regard your obligation as buyer is to pay the stamp and duty charges for keeping up of the concession while working the mines during the life of the option, and to keep the properties free and clear from liens in regard to labor and materials. In the same document there will be stipulated that in event of failure to complete the payments mentioned, or within the time stipulated the contract will be rescinded and all amounts received in account of the price are to be held without any obligation as to their return. In this case the buyer can take back within a space of three months the machinery that he has installed in the mines and also materials that he has thereon, leaving, however, in the mines any permanent installations.

If the deposit of \$9,000 mentioned above is not made or if within a time of ninety days from this date you will not obtain the permission from the Secretary of the Government, the present option is to be terminated without obligation on my part to refund your \$1,000 that I have received in this regard.

Plaintiff's Pre-Trial Exhibit No. 55—(Continued)

All of the expense in connection with the writing of the promise of sale, as well as the deed, is in this case for account of the buyer.

In the event that you agree to the terms mentioned above, I ask that you confirm by signing and returning to me the duplicate of this letter.

/s/ JUAN F. ROBINSON.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 56

Translation

No. 1161.—In the City of Hermosillo, State of Sonora, Mexico on the 31st day of October, 1944, before me, Attorney Horacio Sobarzo, Notary Public No. 5, and the witnesses hereto, Nicasio Ruibal, married, a merchant, and Luis Garnica, a bachelor, a private employee, both of legal age, Mexicans, local residents and without legal disability, appeared Messrs. Jorge F. Robinson, Juan F. Robinson and Miss Ana Robinson, the first two married and the latter single, miners, residents of La Barranca, Municipality of San Javier, in this State, parties of the first part, and, as party of the second part, Mr. Malcom C. Little, an American citizen an attorney, a resident of Nogales, State of Arizona, and temporarily in this place, as President and on behalf of the corporation "Mina del Refugio, S. A.," said parties not being affected by the prohibitions upon Notaries in regard to contracts concerning

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

enemy properties and business and not requiring a permit from the Intersecretarial Board for the execution of these presents. The contracting parties, all of legal age and personally known to the undersigned Notary, to which I certify, and, in my opinion, competent to contract and obligate themselves, stated that they hereby enter into the agreement, contained in the following declarations and clauses:

Declarations:

I. Messrs. Jorge F. Robinson, Juan F. Robinson and Miss Ana Robinson are referred to herein as the "Owners," and Mina del Refugio, S. A. as the "Company."

II. Mr. Jorge F. Robinson is the grantee and owner of the two following mineral "exploitation" claims, situated in the Municipality of San Javier, Sonora: "Tascalama," containing ten hectares, title No. 89980, issued October 24, 1939, and registered on the same date under No. 622. Vol. 64, page 156, of the General Book of Concessions of the Public Mining Records, November 17, 1939; and "Noche Buena," containing nine hectares, Title No. 105641, issued June 17, 1944, and registered the same day under No. 296, page 75 of Vol. 92, of said General Book of Concessions.

III. Mr. Juan F. Robinson is the grantee and owner of the "exploitation" mineral claim No. 94190, known as "Barranquena," containing ten

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

hectares, situated in said Municipality of San Javier, Sonora, issued August 12, 1940, and registered on the same day under No. 203, page 51 of Vol. 72, of said General Book of Concessions.

IV. Miss Ana Robinson is the grantee and owner of the "cateo" mining concession known as "Santa Ana," Title No. 97617, containing 9 hectares and situated in said Municipality of San Javier. On January 17, 1944, said grantee applied to the Mining Agency in this place for an "exploitation" concession of the same name and to replace said "cateo" title, which proceeding bearing the No. 1779, is being conducted in said Agency.

V. On September 18, 1944, Mr. Juan F. Robinson applied to said Mining Agency for the following exploitation concessions, situated in said Municipality of San Javier: "Ana Estella," containing 50 hectares, Expediente No. 1898; "Candelaria," containing 11 hectares, Expediente No. 1899; and "Veta Grande," of 9 hectares, Expediente No. 1900. (Note: the "expediente" is the denouncement or location, record.)

VI. Messrs. Jorge F. Robinson owns two-thirds ($\frac{2}{3}$) and Juan F. Robinson owns one-third ($\frac{1}{3}$) of the machinery, equipment, and surface improvements now existing on the "Tascalama" claim, and, of the houses existing on the surface of the "Santa Ana" and "Candelaria" claims, of which the following is an inventory:

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

- 1—15 Ton Mill.
- 1—6 H.P. Fairbanks Motor.
- 1—Dodge automobile motor.
- 1—Concentration table.
- 1—1-15/16" x 15' shaft.
- 1—36" pulley.
- 1—38" pulley.
- 3—Pulleys of 6", 8" and 12".
- 1—Belt complete for classifier.
- 1—6" x 20' belt.
- 1—3" x 10'.
- 1—Dodge 25 ton crusher.
- 4—Iron bars.
- 2—Small iron bars.
- 200—feet of 2½" pipe.
 - 2—Cylindrical water tanks, of 3' and 4' long, respectively.
 - 1—40 H. P. boiler without tubes.
 - 2—Mine cars complete.
 - 1—car body.
 - 60' of rail.
- 200—Feet of ¾" new pipe.
- 40—Feet of 5/8" strip iron.
 - 1—Wooden flotation machine.
 - 1—Forge.
 - 1—Anvil.
 - 1—One ton tackle.
 - 1—Old Steam hoist.
 - 1—15 H. P. steam cylinder.
 - 1—Small steam pump.
 - 100' of 1½" pipe.

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

1—5 Ton mill.

1—Wooden Chute.

1—Mill Building.

Santa Ana House.

La Esperanza House.

2000' of rail.

1—Wagon.

450' of 11½" pipe.

1—Old 60 H. P. Boiler.

1—Water heater for boiler.

Mine tools.

Mill tools.

Mill equipment, corrugated iron, bolts, old iron, etc.

Clauses:

First: The owners promise and agree to sell to the Company, or to such competent person or company that it may designate, or to which it may assign its rights hereunder, the mining claims, those to which titles have been issued and to which titles are pending, and the other properties described in the foregoing declarations.

Second: The owners declare that they have complied with all the obligations by law imposed on said properties, that the properties are free of liens and encumbrances, and that the proposed sale shall include all the rights, appurtenances, improvements, easements and accessions thereunto belonging.

Third: The agreed price of said properties shall be \$40,000.00 dollars, American money, which

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

amount is apportioned among said properties as follows: To the claims "Tascalama" and "Nochebuena," owned by Jorge F. Robinson, \$20,000.00; to the claim "Barranquena," owned by Juan Robinson, \$10,000.00; to the claim "Santa Ana," owned by Miss Ana Robinson, \$3,500.00 to the denouncements referred to in declaration V preceding, \$500.00; and to the machinery, equipment and surface improvements referred to in declaration VI preceding, \$6,000.00.

Fourth: The Owners acknowledge receipt at this time, on account of said purchase price, of the sum of \$10,000.00 dollars, each one of the amount belonging to him. If the Company exercises its right to purchase, the rest of the purchase price, or \$30,000.00 shall be paid: \$10,000.00 on or before August 10, 1945; \$10,000.00 on or before August 10, 1946; and \$10,000.00 on or before August 10, 1947, this latter instalment to be paid at the time of the execution of the final deed of transfer. From each annual instalment there shall be deducted the amount received as royalty during the preceding year by the owners, as provided in clause seven, and the Company shall pay only the difference between \$10,000.00 and the amount in royalties thus received. Deferred payments shall not bear interest. All future payments shall be made in the City of Hermosillo to Juan F. Robinson, and each of such payments shall be divided into two parts: the first in income tax stamps, as provided in Schedule Three,

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

in the amount due on each payment, as by law provided, and the rest in dollars, the value of the stamps to be determined according to the exchange rate in effect on the day on which payment is made.

Fifth: The Owners place at the exclusive disposition of the Company the mineral claims and other properties mentioned in the declarations aforesaid and grant to it the right to take possession thereof, with all the rights incident to legal possession, to the exclusion of any other person, and, at its own and exclusive expense to use said properties and to explore, work and exploit said mines in such manner as it may see fit, and to extract therefrom, treat, sell and export the ores therein contained and the products derived therefrom.

Sixth: The Company may take to and install on the properties the machinery and equipment that in its judgment are necessary to their operation and make such improvements on the surface or in the mines that it deems advisable.

Seventh: The Owners shall receive, and the Company agrees to pay to them, as a just rental for the use and enjoyment of the optioned properties and as adequate compensation for their depletion, a participation equal to 10% of the net amount realized from the ores extracted from the mines. The "net amount realized" is understood to be the amount remaining after deducting from the gross

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

value appearing in each liquidation issued by the smelter the following expenses: The smelting charge and other deductions made by the smelter, taxes of every kind or denomination, railroad freight or express to the smelter from the station where the ores or their products are loaded, and, in case of exportation, the expenses on both sides of the border. The smelter is authorized to pay the foregoing expenses and to deduct the same from the gross value of each shipment, so that the net amount appearing on each liquidation shall be the net amount realized therefrom. The smelter is authorized to pay to Juan F. Robinson, if the latter so requests, the amount belonging to the Owners out of the net amount realized from each shipment, and the Company is obligated to pay said amount to the owners if the smelter does not do so, for which purpose a copy of this instrument shall be delivered to the smelter to which the ores and other products are shipped and shall serve as its authority to act as herein agreed. For purposes of this contract the word "smelter" shall apply to any purchaser of the ores or their products.

Eighth: The term of the option contained in this contract is established for the benefit of the Company, and therefore it may exercise its right to purchase herein granted at any time before the expiration of the term, by giving to the Owners ten days advance notice. After the expiration of the ten days, the Company may demand a deed from the

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

Owners. From the price stated in clause three above there shall be deducted the sum received by the Owners in royalties, as provided in clause seven, and therefore when the money thus received by the Owners amounts to \$30,000.00, they shall be obligated to grant to the Company, or assigns, a deed of sale to all of the properties included in this option. The Owners shall be also so obligated, even before receiving in royalties the amount of the purchase price, if the Company, at the time of execution of the deed pays to them an amount sufficient to complete the purchase price. When such deed is made the Company is authorized to retain out of the unpaid portion of the purchase price and to pay to the tax offices, any income tax due on the transaction and any such tax due prior to the date of the transfer.

Ninth: In addition to the foregoing the Company shall be obligated, during the life of this contract: (1) To keep account books in accordance with present or future laws, therein entering accounts of ores treated or sold, and permit the Owners, by their representative and during office hours, to inspect such accounts to determine their correctness and to take copies thereof. (2) To do the annual work necessary to keep the mine titles in force, to pay during the months of January, May and September of each year the taxes due on said mines, and to pay the production, ad valorem and other taxes assessed against the ores and mineral prod-

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)
ucts sold or exported and not paid by the smelter.

(3) To permit the Owners, by their representative and at his risk, to enter the mines to inspect the operations and work being carried on therein.

(4) To pay for the material purchased and labor employed in the operation of the properties and legal claims for occupational injuries.

Tenth: The Owners declare that there are no contracts in force affecting said mineral claims and appurtenances, or authorizing their work or exploitation, and they obligate themselves, during the life of this contract, not to perform any acts or execute any contracts that directly or indirectly, might injuriously affect the rights hereby acquired by the Company or interfere with the exercise thereof, and all things done in violation of this obligation shall be void.

Eleventh: If, due to political disturbances, strikes, unsurmountable transportation difficulties, labor or legal troubles, intervention by the jure or de facto authorities, fires, cave-ins or other circumstances beyond the control of the Company, the Company should have to suspend operations, the terms herein stipulated shall be considered as extended for a time equal to such suspensions, if the Company so requests in writing, advising the Owners of the beginning and end of such suspensions, but such suspensions shall not taken together exceed one year; but the obligation to pay the Owners their participation in the net amount realized from ores sold, the payment of taxes, and

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

doing the minimum annual work by law required shall not be suspended for any cause.

Twelfth: If the Company does not pay to the Owners the price agreed upon, as provided in clauses three and four hereof, or does not pay the participation referred to in clause seven, or does not pay the mining taxes, or does not do the necessary annual work to keep the titles to said claims in force, and if such failure of compliance continues for thirty days, because of any of such causes this contract may be rescinded.

Thirteenth: If, in the judgment of the Owners, the Company should fail to comply with any of the obligations mentioned in the preceding clause, within thirty days from the date of such supposed default, the Owners shall notify the Company thereof by registered mail, with return receipt, therein stating the cause for such notice. If the Company has defaulted, it shall have thirty days within which to remedy the default and if it does not do so within said period, the Owners may proceed by suit to rescind this contract, the Company reserving all rights in connection therewith.

Fourteenth: If this contract terminates for any cause other than the purchase of the properties by the Company, possession by the Company shall cease and the properties shall be returned to the Owners who shall retain as damages payments previously made, but the Company shall not be liable for deterioration. The Company, may, within

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

three months following such termination, dismantle and remove the machinery and equipment it has installed at the mines and all materials not affixed to the soil, but it cannot remove from inside the mine rails, timbers and other supporting structures.

Fifteenth: Taxes on payments which under this contract are received by the Owners shall be paid by the Owners.

Sixteenth: The parties designate the City of Hermosillo, Sonora, as the place for the performance of this contract, and they subject themselves to the courts or said city in all matters relating to its interpretation and performance. For purposes of article 1069 of the Commercial Code the Owners designate House No. 144 Calle Hidalgo, and the Company the office of the Banco Nacional de Mexico, both in said City, for service of process and the conduct of such proceedings as may be necessary.

Seventeenth: Any notice that one of the parties desires to make on the other shall be considered as made ten days after the date on which it is deposited in a Mexican post office, registered, with return receipt, with proper postage and addressed to the party to be notified at the respective address mentioned in the preceding clause, the Owners to send signed copies of such notices, by registered mail with return receipts, to Mr. John C. Higgins,

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

1303 Public Service Building, Portland, Oregon, U.S.A. However, the parties may serve notice on each other by any other legal methods.

Eighteenth: The Owners appoint as their representative, in relation to this contract, Mr. Juan F. Robinson, and they empower him to receive payments, execute receipts and acquittances, distribute among the Owners the moneys received hereunder, and to deal with the Company in all matters hereunto pertaining and all that said Mr. Robinson may do in the premises shall be binding upon the Owners.

Nineteenth: The Owners consent to the assignment by the Company of this contract and of the rights hereunder acquired to any competent person or company, on condition that such assignee assume all of the obligations herein incurred by the Company, and that there be delivered to Mr. Juan F. Robinson, or to any other one of the Owners, a testimonio (certified copy) of the instrument of assignment. When such instrument is executed the obligations hereunder of the Company shall cease.

Twentieth: If the Company elects to exercise its right to purchase said properties, and if, in accordance with prohibitive laws, it cannot acquire them, either directly or through other competent person or corporation, without the requirement that Mexican nationals own part of its capital stock and be members of its Board of Directors; or if, for any

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

other cause, the Company or its assigns, as the case may be, cannot acquire said properties, the Owners expressly agree, in such case, and if the purchase price is paid in full, as above provided, that the Company, or assigns, may continue in possession of said properties and exploit them for ten years more, from the date of expiration of the term of this contract, and thus successively by decades until the ores are exhausted; and the money previously paid by the Company on account of the purchase price shall be considered as rent, for the entire period of such extension, for the use and enjoyment of the properties and as compensation for their depletion, without obligation on the part of the Company to pay anything more, except the expenses and taxes caused by such new situation, but without prejudice to the obligation of the Owners to execute a proper deed whenever the laws so permit.

Twenty-first: All expenses arising from this contract and from the execution of the deed, if a deed is executed, shall be paid by the Company, except expenses connected with Income Tax, which shall be paid by the Owners.

As evidence of his legal residence in the country, Mr. Malcolm C. Little exhibited a document the relevant part whereof is as follows: "United States of Mexico.—Department of the Interior.—Immigration Service.—No. 8083.—Form 10.—In accordance with the exemptions provided in article 68 of the present immigration law, as applied to foreigners

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

legally admitted into the country and who, by reason of their business, have to leave and enter . . . authority is granted to Mr. Malcolm Cutler Little . . . married . . . an American citizen, a legal resident of the country, holder of . . . the official receipt No. 9242717, issued by the National Registrar of foreigners.—Nogales, Son., July 20, 1944.—Director of Immigration.—Abel Boza Aleman.—Scroll.—Official Seal.”

As evidence of his authority to act herein, Mr. Malcolm C. Little also exhibited the following documents:

(a) A first certified copy of instrument No. 644, of January 5, 1932, executed in the City of Nogales, Sonora, by Lic. Arsenio Espinosa, Notary Public No. 6, containing the articles of incorporation of “Mina del Refugio, Sociedad Anonima,” there appearing on said document a notation showing that it was recorded in the special Mining Record, Vol. 1, No. 62, January 13, 1932. The relevant parts of said document are as follows: First.—The name of the Company is “Mina del Refugio, Sociedad Anonima.” Second.—The main domicile of the Company is the City of Nogales, Sonora . . . Third.—The purposes of the Company are: (a) To acquire, exploit and alienate mining claims and concessions . . . (b) To acquire, exploit and alienate industrial plants and installations, buildings and lands necessary or conducive to the foregoing purposes . . . (d) . . . and, in general, the execution of

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

all contracts and the performance of all acts necessary or conducive to the realization by the Company of said purposes. Fourth.—The period of duration of the Company is fifty years, which period shall terminate December 31, 1982 . . . Seventh.—The Company shall be governed by a Board of Directors, consisting of not fewer than three nor more than seven members, who will elect from among themselves a President, a Vice-President, a Secretary and a Treasurer. One person may hold two offices.—The Board of Directors shall have the following powers: (a) To carry on all operations, perform all acts and execute all contracts required by the corporate purposes . . . including acts of “dominion,” such as to sell, pledge or otherwise to encumber . . . corporate properties . . . to buy subject to term payments . . . (b) To represent and to cause the Company to be represented in and out of court, with full powers . . . (e) Such other powers as are conferred by law or the by-laws of the company and that are not expressly reserved to the stockholders . . . By-Laws . . . Article 39.—The President shall have the following powers: 1. To represent the Company in and out of court and as such to exercise the powers conferred by law and by these by-laws . . . 2. . . . To represent the Company before all authorities, political, administrative or judicial, federal, local or municipal and conduct all kinds of negotiations, even those that require a special grant of authority in connection with the

Plaintiff's Pre-Trial Exhibit No. 56—(Continued)

principal matter in hand, incidents thereto and recourses, including the authority to make bids and counter-bids . . . 3. To denounce, apply for, buy or otherwise acquire mining claims and concessions, to manage and lease the properties of the Company; to enter into contracts and perform all kinds of acts, civil or mercantile, required by the ordinary business of the Company; to execute the necessary public (notarial) and private (before witnesses) documents that may be required . . .

(B).—The Minute Book of meetings of stockholders and of the Board of Directors of "Mina del Refugio, S. A.," duly authorized by the Director of the Federal Tax Office of the City of Nogales, Sonora, January 22, 1932, on pages six to nine whereof appear the minutes of a regular meeting of stockholders held January 20, 1943, the relevant part whereof being as follows: "In Room four of the Banco Ganadero and Agricola, S. A. Building, in Nogales, Sonora, at 10 a.m. on January 20, 1943, there met the stockholders of "Mina del Refugio, S. A." whose names appear in the list of attendance attached to the record of this meeting . . . The President and Secretary being absent, the Vice President, Mr. Enrique Torres, Jr., acted as Chairman and Miss Donnadiou by special appointment acted as Secretary. All the shares into which the capital stock is divided being represented, notice of the meeting was waived as provided in article 16 of the bylaws of the Company, and the Chairman

Plaintiff's Pre-Trial Exhibit No. 56—(Continued):

declared the meeting legally convened and explained that the purpose of the meeting was to take up the matters referred to in article 181 of the Incorporation Law. Thereupon the following resolutions were adopted by unanimous vote:

First: Resolved to elect as members of the Board of Directors and as officers for the corporate year of 1943, and until their successors are elected, the following persons: Malcolm C. Little, W. C. Taylor and Enrique Torres, Jr., the first as President, the second as Vice-President and the third as Secretary and Treasurer.

Second: There being no further matters before the meeting, the same was adjourned and these minutes were inscribed in the minute book and were signed by all those present . . .”

The matters hereinbefore related or inserted are true copies from the respective originals, which originals I certify to have seen and to have returned to the interested parties and that, as shown by said Minute Book, a new Board of Directors has not since been appointed.

There were present at the execution of these presents Mrs. Guadalupe M. de Robinson and Mrs. Viriginia L. de Robinson, both of legal age, competent to contract and obligate themselves, personally known to the undersigned Notary, who stated that they grant to their respective husbands, Juan F. Robinson and Jorge F. Robinson, their consent, as by law required, to the execution of this instrument, to which they agree.

Plaintiff's Pre-Trial Exhibit No. 56—(Continued):

With respect to Income Tax the contracting parties stated that they do not owe any such tax and neither does the company represented by Mr. Little.

And this document having been read to the contracting parties and its legal value and effect having been explained to them, likewise the need of recording the same, they ratified and signed it before me and in the presence of said witnesses.—I certify.—(Signed) Juan F. Robinson.—J. F. Robinson.—M. C. Little.—Guadalupe M. de Robinson.—Virginia L. de Robinson.—Ana Robinson.—N. Ruibal.—L. Garnica.—Scrolls.

On the 9th day of the following month of November, the day on which the stamp and income taxes were paid, I authorize this instrument.—I certify.—(Signed) Horacio Sobarzo.—Scroll.—Notarial Seal.

The same seal in the margin and cancelled income tax stamps to the value of \$4,204.95 pesos, and common stamps to the value of \$60.20, and \$6.02, or 10% additional tax.

“Citizen Director of the Federal Tax Office, Present.—Under number 1161, before me on this day there was executed a document in which Juan F. Robinson, Jorge F. Robinson and Ana Robinson promised and agreed to sell to the company “Mina del Refugio, S. A.,” or to such competent person or company that it might designate, the exploitation mining concessions “Tascalama” and “Noche

Plaintiff's Pre-Trial Exhibit No. 56—(Continued): Buena," for \$20,000.00 dollars; the exploitation mining concession "Barranquena" for \$10,000.00 dollars; the cateo mining concession "Santa Ana," for \$3,500.00 dollars; the denouncements "Ana Estela," "Candelaria" and "Veta Grande" for \$500.00 dollars, all of which concessions are situated at San Javier, in this State; and the machinery, equipment and surface improvements existing on the "Tascalama" claim, for \$6,000.00 dollars.—The optionors received at the time of signing this instrument, on account of said purchase price 25%, or, on account of the mining claims, \$8,500.00 dollars and \$1,500.00 on account of the equipment, machinery and surface improvements aforesaid. In the same instrument said Messrs. Robinson named Juan F. Robinson as their common representative in relation to this contract, to receive payments, sign receipts, etc. Said document is contained on seven sheets of the Protocol. Pursuant to articles 83 and 88 of the Regulations of the Income Tax Law the document is subject to a tax of \$4,204.95 in stamps under Schedule III on \$8,500.00 dollars, which is 25% of the purchase price of the mines, which please cancel on this return, affixing the body of the stamps to the original and the stubs to the duplicate, as provided in article 83.—Also and in accordance with section 44, subsection I, letter (a) the promise to sell the equipment, machinery and improvements for \$6,000.00 dollars, at the official exchange rate of \$4.85 for 1,

Plaintiff's Pre-Trial Exhibit No. 56—(Continued) :

is subject to a tax in common stamps of \$58.20, and \$5.82, or 10% additional, and, as provided in section 42, subsection I of the Tarif, \$2.00 in common stamps and \$0.20 or 10% additional, which please cancel on this return. With respect to the Income Tax Law the parties state, Mr. Malcolm C. Little for "Mina del Refugio, S. A." and Messrs. Robinson, that they owe no such tax. Hermosillo, Sonora, October 31, 1944.—The Notary, Horacio Sobarzo, Scroll."

The Director of the Federal Tax Office in this City certifies: that on this day the following taxes were paid: Income Tax, Schedule III, \$4,204.95; in common stamps \$58.20 and \$5.82, or 10% additional; and \$2.00 in common stamps and \$0.20, or 10% additional, in accordance with the liquidation made by and subject to the responsibility of the subscribing Notary.—Hermosillo, Sonora, November 9, 1944.—J. Chavez E.—Scroll.—Official Seal.

This First Copy of the First Testimonio Was Taken From the Original For the Use of "Mina Del Refugio, S. A." It Is Contained On Eight Sheets, Duly Compared, with the Stamps By Law Required, Duly Cancelled, and It Is a True Copy of the Original.—I Certify.

Hermosillo, Sonora, November 9, 1944.—(Signed) Horacio Sobarzo.—Notarial Seal.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 57

Agreement Between Mina Del Refugio, S. A.
and

Clayton R. Jones, D. E. Harris and John C. Higgins

Declarations:

I.

Messrs. Clayton R. Jones, D. E. Harris and John C. Higgins are referred to herein as "First Parties" and Mina del Refugio, S. A., as the "Company."

II.

First Parties have procured the granting of an option to the Company for the purchase of certain mining claims, including certain equipment thereon, located in the Municipality of San Javier, Sonora, together with the right to explore, work and exploit said mines pending such purchase, all as set forth in that certain option agreement entered into on the 31st of October, 1944, between the Company and Juan F. Robinson, Jorge F. Robinson and Ana Robinson; said mining claims are referred to herein as the Robinson mining properties.

III.

First Parties have expended the sum of \$10,000 U. S. Currency (48,500 Mexican pesos) in making the first payment on the purchase price under said option, and have also expended further sums totaling \$13,668.40 U. S. currency (66,281.74 Mexican pesos) in the investigation, exploration, development and equipment of said Robinson mining properties for operation under said option agreement.

Plaintiff's Pre-Trial Exhibit No. 57—(Continued):

IV.

The Company will require further large sums of money and additional equipment and materials to continue the exploration, development and exploitation of said mining properties and to make further payments on the purchase price thereof, and First Parties hereby offer to provide the Company with money and equipment and materials for the foregoing purposes under the following terms and conditions:

Clauses:

First: First Parties shall provide such sums of money and such items of equipment, materials and supplies for the foregoing purposes as shall be mutually agreed upon by the Company and First Parties, and as consideration therefor, and as consideration for the procurement of the aforesaid option, the Company shall be bound to First Parties as follows:

(a) Promptly after the execution of this agreement, the Company shall execute and deliver to each of First Parties its notes for the full amounts theretofore expended by such party for and on account of the investigation, examination, exploration, development and equipment of the Robinson mining properties, and for payment on the purchase price under the aforesaid option agreement thereon; said notes shall be payable two years after date and shall bear interest at six per cent per annum from the date when the principal sum represented by such note was expended by the payee for

Plaintiff's Pre-Trial Exhibit No. 57—(Continued):
the purposes above stated, interest being payable at the maturity of the note.

(b) On or about the last day of each month hereafter, the Company shall execute and deliver to each of the First Parties its note or notes for all amounts advanced to the Company or expended for its benefit by such party during such month, at the request of the officers of the Company, for or on account of the exploration, development, equipment or exploitation of the aforesaid Robinson mining properties or for payment on the purchase price under the aforesaid option agreement, or for other Company purposes; said notes shall be payable two years after date and shall bear interest at six per cent per annum from the date of the advance or the expenditure by the payee of the principal sum represented by such note, interest being payable at the maturity of the note; provided, however, that promptly after the execution of this agreement, First Parties shall pay to the Banco Nacional de Mexico, at Hermosillo, Sonora, for credit to the account of Arthur E. Johnson, Trustee, for the use and benefit of the Company, the sum of 5,000 pesos, Mexican currency; said sum shall be in full payment of the "capital social" of the Company, and shall constitute the Company's "capital social" without any obligation or indebtedness therefor from the Company to said Jones, Harris and Higgins, and without the issuance of any note or notes therefor, and the capital stock of the Company shall thereby become fully paid.

Plaintiff's Pre-Trial Exhibit No. 57—(Continued):

(c) Upon demand of the parties entitled thereto, the Company shall execute and deliver to each of the First Parties its note or notes, payable two years after date, for the agreed purchase price and reasonable value of all used equipment heretofore or hereafter sold and delivered to the Company; the principal sum of said note or notes shall bear interest at six per cent per annum from the date or dates when the equipment represented thereby shall have been delivered for use at the Robinson mining properties, said interest being payable at maturity.

(d) All monies advanced or expended by First Parties for any of the purposes described in Clauses (a) and (b) above, together with the amounts representing the reasonable purchase price and value to the Company of the mining and milling equipment sold and delivered to the Company as stated in Clause (c) above, together with interest thereon in accordance with the terms above stated, shall become obligations of the Company from the dates when such monies were advanced or expended and from the dates of delivery to the Company of the aforesaid equipment, and the Company shall be and remain indebted under open account for the aforesaid amounts and interest therein as aforesaid to the respective persons who advanced or expended the monies or who sold and delivered the equipment, until such persons shall have been reimbursed by the Company therefor or until the Company shall have executed and delivered to such persons its note or notes therefor as above provided.

Plaintiff's Pre-Trial Exhibit No. 57—(Continued):

(e) Upon demand therefor by the party entitled thereto, the Company shall execute and deliver to each of the First Parties chattel mortgages on all items of equipment sold and delivered to the Company by such party, giving to such party a lien on such items of equipment to secure the payment of the purchase price therefor and the interest thereon as above provided.

In Witness of the execution of this agreement on this 20th day of November, 1944, the First Parties have subscribed their names hereto and the Company has caused its name to be subscribed hereto by its President and Secretary thereunto duly authorized.

/s/ D. E. HARRIS,
/s/ CLAYTON R. JONES,
/s/ JOHN C. HIGGINS,
First Parties.

Witness:

/s/ MARGARET L. STEWART,
/s/ JANET J. ARNOLD,

MINA DEL REFUGIO, S. A.

By /s/ JOHN C. HIGGINS,
President.

By /s/ D. E. HARRIS,
Secretary.

Witness:

/s/ MARGARET L. STEWART,
/s/ JANET J. ARNOLD.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 58

Meeting of Directors

At ten o'clock a.m. on the 20th day of November, 1944, the Board of Directors of "Mina Del Refugio, S. A.," met in Room 504 of the Board of Trade Building in Portland, Oregon, there being present Dennison E. Harris, Clayton R. Jones and John C. Higgins, constituting the full membership of the Board.

Mr. Higgins presided as Chairman, and Mr. Harris acted as Secretary.

Mr. Higgins, as President of the Company, stated that the purpose of the meeting was to consider a plan that would enable the Company to procure the money necessary for the exploration, development, operation and acquisition of the mining claims situated in the Municipality of San Javier, Sonora, described in the option thereon taken by the Company on the 31st of October, last, from Juan F. Robinson, Jorge F. Robinson, and Ana Robinson.

Thereupon Mr. Jones presented to the Board for its consideration a draft of a proposed agreement between the Company and Messrs. Harris, Jones and Higgins as individuals whereby they offered to advance to the Company funds for the foregoing purposes upon terms as stated in said draft.

A copy of said proposed agreement is included in the record of this meeting.

After full consideration of said proposed agreement, the following resolutions were adopted by unanimous vote:

First: Resolved that said proposed agreement be and the same is hereby accepted and ratified, and the President and Secretary of the Company are hereby authorized and directed to execute said agreement in quadruplicate in the name of the Company and to deliver an executed copy thereof to each of said individuals, Harris, Jones and Higgins, retaining one executed copy for the Company's files.

Second: Resolved that either the President or the Vice President of the Company is authorized and directed to execute and deliver to Messrs. Jones, Harris and Higgins, upon their respective demands, notes of the Company in accordance with the terms of said agreement, in such amounts and at such times as the officers of the Company shall determine are required by the terms of said agreement in consideration for the following:

(a) All monies heretofore or hereafter expended by said Jones, Harris and Higgins, respectively, for and on account of the examination of the properties covered by the aforesaid option and the acquisition of said option and the making of payments thereunder;

(b) All monies heretofore or hereafter advanced or expended by said Harris, Jones and Higgins, respectively, for and on account of the exploration and development of the mining claims covered by the aforesaid option and the prosecution of mining operations thereon;

(c) All monies heretofore or hereafter advanced

Plaintiff's Pre-Trial Exhibit No. 58—(Continued):

or expended by said Jones, Harris and Higgins, respectively, for and on account of the purchase, repair, transportation and delivery of mining equipment, materials and supplies used on and in connection with the exploration, development and mining operations carried on by said Jones, Harris and Higgins and/or by this Company on the mining properties covered by said option;

(d) All monies advanced or paid out by said Jones, Harris and Higgins, respectively, for expenses or other obligations of the Company incurred in the course of its business, or deposited by said Jones, Harris and Higgins, respectively, to the credit of Arthur E. Johnson, Trustee in the Banco Nacional de Mexico or the First National Bank of Nogales, and thereafter expended for the use and benefit of the Company; provided, however, that said Jones, Harris and Higgins shall promptly hereafter pay to the Banco Nacional de Mexico, at Hermosillo, Sonora, for credit to the account of Arthur E. Johnson, Trustee, for the use and benefit of the Company, the sum of 5,000 Pesos, Mexican currency; said sum shall be in full payment of the "capital social" of the Company and shall constitute the Company's "capital social" without any obligation or indebtedness therefor from the Company to said Jones, Harris and Higgins, and without the issuance of any note or notes therefor and the capital stock of the Company shall thereby become fully paid;

(e) For such amounts as shall represent the rea-

Plaintiff's Pre-Trial Exhibit No. 58—(Continued):

sonable purchase price and value to the Company of all mining and milling equipment, materials and supplies owned by said Jones, Harris and Higgins, respectively, and sold and delivered by them to the Company for the Company's use in the exploration, development and mining of the properties described in the aforesaid option.

Third: Resolved that all monies advanced or expended by said Harris, Jones and Higgins for any of the purposes described in Clauses (a), (b), (c), (d) above, together with the amounts representing the reasonable purchase price and value to the Company of the mining and milling equipment, materials and supplies sold and delivered to the Company as stated in Clause (e) above, together with interest thereon in accordance with the terms of the aforesaid proposed agreement, shall become obligations of the Company from the dates when such monies were advanced or expended and from the dates of delivery to the Company of the aforesaid equipment, materials and supplies, and the Company shall be and remain indebted under open account for the aforesaid amounts and interest thereon as aforesaid to the respective persons who advanced or expended the monies or who sold and delivered the equipment, materials and supplies, until such persons shall have been reimbursed by the Company therefor or until the Company shall have executed and delivered to such persons its note or notes therefor as above provided.

Fourth: Resolved that the President or the Vice President, together with the Secretary, of the Com-

Plaintiff's Pre-Trial Exhibit No. 58—(Continued) :

pany is authorized and directed to execute and deliver to Messrs. Jones, Harris and Higgins, respectively, such chattel mortgages or other documents of security as may be required in accordance with the terms of the aforesaid proposed agreement covering such equipment, materials and supplies as may be sold and delivered to the Company by said Jones, Harris and Higgins, respectively.

The President further declared that in his opinion it would expedite the business of the Company if a branch office of the Company were established in the City of Portland, Oregon, and thereupon, by unanimous vote, the following resolution was adopted:

Resolved, that a branch office of the Company be and the same is hereby established in the City of Portland, State of Oregon, U. S. A., at Room 817, Board of Trade Building, in said city, and that meetings of the Board of Directors of the Company may be held at such branch office from time to time as the Board may determine.

It was also, by unanimous vote, resolved to authorize Malcolm C. Little to protocolize these minutes.

The record of this meeting consists of the following documents: a copy of the minutes signed by the directors present and a copy of the proposed agreement referred to in the minutes between the Company and Messrs. Jones, Harris and Higgins.

/s/ JOHN C. HIGGINS,

/s/ D. E. HARRIS.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 59

Agreement

This Agreement, between Clayton R. Jones, John C. Higgins and D. E. Harris, Witnesseth:

1. The parties hereto entered into an agreement of trust under date of September 1, 1944, relating to certain mining claims and properties located near the town of La Barranca, Sonora, Mexico. Said agreement of trust is hereby cancelled.

2. In proceeding with the acquisition, development and exploitation of the said mining properties, the parties hereto agreed that the contract of lease and option covering said properties, which had originally been executed between Juan F. Robinson and said D. E. Harris, under date of August 10, 1944, should be assigned by said Harris to Mina del Refugio, S. A., a Mexican corporation, and said contract of lease and option is now held by said Corporation.

3. It was also agreed by and between the parties hereto that funds for the acquisition, exploration, development and exploitation of said mining properties, should be contributed as follows: \$3,000 by said D. E. Harris and members of his family; 50% of the balance of said funds by Clayton R. Jones, and 50% thereof by John C. Higgins. In pursuance of said agreement, said D. E. Harris has heretofore contributed \$1,500; Robert F. Harris has contributed \$1,000 and R. Blaine Harris, has con-

tributed \$500, making a total contribution by said Harris and members of his family, of \$3,000. Said Clayton R. Jones and John C. Higgins have each contributed approximately \$15,000 in cash and they have each made additional substantial contributions in mining and operating equipment, and they plan to make further contributions of cash and operating equipment.

4. It has been agreed by and between the parties hereto that ten per cent (10%) of the stock of the aforesaid Corporation shall be issued to Arthur E. Johnson, or his assigns, ten per cent (10%) to Daniel D. Kroder, or his assigns, and the remaining eighty per cent (80%) of the stock of said Corporation shall be divided between Clayton R. Jones, John C. Higgins and the above-named members of the Harris family, in proportion to their respective contributions in cash and in equipment, at its reasonable value, and that such stock shall be so distributed when the total of said contributions, as finally made, has been determined.

It has also been agreed by and between the parties hereto that all of the contributions of said parties, except the amount thereof required to pay up the 5,000 pesos capital stock of said Corporation, shall be regarded as loans to said Corporation, to be represented by notes of said Corporation and to be repayable within two years from the respective dates when said contributions in cash and equipment were made, with interest at five per cent (5%) per annum, and that said notes shall be payable

either at or before their maturity, before any dividends shall be declared by said Corporation.

Dated this day of March, 1945.

/s/ CLAYTON R. JONES,

/s/ JOHN C. HIGGINS,

/s/ D. E. HARRIS,

/s/ R. F. HARRIS,

/s/ R. BLAINE HARRIS.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 60

Walter M. Wells

71 Broadway

New York (6)

April 17, 1945.

Mr. Clayton R. Jones,
Board of Trade Bldg.,
Portland, Oregon.

Dear Clayton:

Kroder has sent to his sister, Mrs. Scott, his assignment of the nine per cent of the mine he had been holding. She now has a total of eleven per cent which includes the one per cent Johnson agreed to give her.

In the next couple of days, I will be dropping you a note and telling you how the eleven per cent will be divided—it will probably be between two or three of us. What kind of a document will you wish us to send you showing that the individuals

have a right to the percentages I will tell you about? It was my idea that you would probably want photostats of Kroder's assignment for the nine per cent and of Mrs. Scott's two per cent. In addition, I suppose you would want a photostat of the assignment showing how the eleven per cent is divided.

For your information, we have agreed to pay Kroder \$5,000 and have also released him of a small sum which we advanced some period back. However, the deal is closed and from here on I hope we can get something out of it. If you get any further reports, you know that I now have a double interest in knowing how the mine is progressing.

Until next week or so, I remain

Sincerely yours,

/s/ M. WELLS.

Original—Air Mail

CC—Regular Mail

4/23/45 CC J. C. Higgins

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 61

July 29th, 1945.

Messrs. Higgins & Jones,
1303 Public Service Bldg.,
Portland 4, Oregon.

Report on Tescalama Mine

Dear Sirs:

At this time development of the Tescalama mine appears to be in a most favorable position. The gratifying results obtained during the month, in which we drove the 200-ft. level 131 feet and a 40-ft. raise to the 153-ft. level, have increased our reserve tonnage and gross value to the point where milling becomes advisable.

The map and data which I am attempting to get into the mail to you tomorrow (past midnight now) will show with reasonable certainty and in accord with mining practice that our ore reserve, north of the shaft now stands at 7,335 tons, width averages 5.5 ft. and \$34.29 per ton in gold and silver in short tons and U. S. dollars. By giving the metric assays a conservative value of \$1. per gram gold and \$12.80 per kilogram of silver the resulting gross value is \$251,481.00.

The unconventional vein habits and structure in this shale formation retarded progress in the earlier months of development, but this problem is now pretty well in hand. The cross-cuts, with their short raise and floor pits, have not only paid well, but have revealed with much regularity the big effects of the thrust fault. As is shown on the assay map,

the impoverished vein filling along the last 100 feet of the 153-level is only a mask over the rich ore shoot lying a few feet below the floor, and which is now continuing past the sickly looking end of the 153-level. On the map it will be noticed that the northeasterly course of the vein is on a straight line and the 153- and 200- level running parallel and uniform dip. It looks well for continuation in this line.

There are many details which could be added to this report data which this urgent time limit may not permit. The constant vigilance required in keeping contact with the ore meant my daily stays at the mine, leaving only nights for mapping and recording and analyzing the day's data, and the tomorrow's direction. The deflection at end of 200-level shows what can happen during three days' absence from mine while confined to office work.

As there probably are no blue-printing places at Hermosillo please have printed in black & white several extra copies of the accompanying assay map tracing for my use and mail to me.

It is hoped that the inclosed data and assay map will for the next few days suffice in giving you the basic information required for your next payment decision. Most of this is still on my working pencil sheets, not yet typed, which I shall inclose in this time emergency.

A summary of ore reserves in the newer development follows:

Of the ore reserve blocks the outstanding one, of

course, is Block "C," entirely within our new development. For extra caution I have drawn the limiting line "g"- "h" at only 25 feet below the 200-level, well within the customary allowance. However, the strength and regularity of the vein on this lowest level deserves the immediate driving of the proposed 250-level from the bottom of the winze. As we drove the 135 feet of the 200-level and the new raise from 200-level to the 153-level during the calendar month of July, besides other work in the raises, cross-cut and pits, we reasonably could hope to nearly duplicate an equal program below present bottom. If this ore body should prove to be of same length and value in the next 100 ft. of slope depth it would add another \$460,000 to the reserves appearing in this report. It is also to be noted that the ore appears to be continuing in good shape beyond present face of 200-level, although samples from the face and close inspection are at this writing not available.

Probable Ore:

Assuming that all Tescalama ores are to be milled on the ground, making a \$15.00 ore profitable, we could count on about 3,000 tons left in the old part of the mine together with an equal amount beyond the margins. The performance of the 200-level, of course, gives much hope in the extension of the rich ore shoot.

(Necessary to close here for mail departure.)

I shall try to get some comments on milling at next opportunity.

Yours very truly,

A. J. KLAMT.

Summary of Ore Reserves

Blocks A-B-C-D-E

Block A	1967 Tons @ \$22.80.....	\$ 29,115.60
	-750 Tons/	
	<hr/> 1277 Tons/	
Block B	1521 Tons	
	-221 Tons	
	<hr/> 1300 Tons @ \$24.11.....	\$ 31,343.00
Block C	1328 Tons @ \$28.11.....	\$ 36,818.00
Block D	1350 Tons @ \$76.20.....	\$ 97,200.00
Block E	1846 Tons @ \$101.20.....	\$186,815.00

Stored Broken Ores

Dump, at portal of Main Tunnel, before 200-level additions — 1220 tons @ \$ 22.00.....	\$ 26,840.00	
Dump, at portal of Main Tunnel—		
220 tons from 200-level @ \$ 60.00....	\$ 13,200.00	(included above)
		(in block D)
Dump, at portal of Main Tunnel—		
pation 60 tons in piles @ \$ 40.00....	\$ 2,400.00	
Stored in Winze 180 tons @ \$100.00.....	\$ 18,000.00	(in block D)
Shipment No. 2, 31 tons @ \$ 35.00.....	\$ 1,085.00	

Total — 8,352 tons @.....\$409,163.00

Basis of conversion: Gram-Tonelada to USA-short ton

Used 1 gram gold@ \$ 1.00

Used 1 kilo silver@ \$12.80 (1000 grams)

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 62

March 21, 1946.

Air Mail

Mr. Malcolm C. Little, Attorney at Law,
Nogales,
Arizona,

Dear Mr. Little:

In accordance with our telephone conversation today I am sending you herewith an original and one copy of each of the agreements concerning our Mexican venture, which relate in any way to Mr. Johnson's stock interest therein or to his functions as our agent and trustee.

Upon reading these agreements you will note that Mr. Jones and I purchased the original option agreement between Daniel D. Kroder and Juan Robinson under an agreement dated July 31, 1944. Under that agreement Jones and I undertook to provide certain sums of money, up to \$35,000, to make the first option payment to Robinson and to provide for a limited amount of development on the property, a corporation was to be organized to own the property, and our cash contributions were to constitute loans to the corporation to be represented by notes which were to be payable before any dividends were declared. The stock of the corporation was to be distributed $\frac{1}{3}$ to Kroder and $\frac{2}{3}$ to Jones and myself.

On August 9, 1944, a supplemental agreement was made with Kroder in which his participation was to be 20% instead of $33\frac{1}{3}\%$, and it was agreed

Plaintiff's Pre-Trial Exhibit No. 62—(Continued) :

that his 20% was to be divided 10% to Johnson and 10% to Kroder. On August 31, 1944, a formal agreement confirming that set out in the letter of August ninth was executed by Jones and myself with Kroder, and Johnson's interest was again stated to be 10%.

Thereafter certain transactions took place between Kroder and Johnson of which we do not here have any record. They are recited in a document executed by Diana Wallace Scott under date of April 24, 1945, of which copies are enclosed. According to our information, the recitals in that document are correct, and they indicate that Kroder, upon some date not stated, assigned Johnson's 10% interest to him and that subsequently thereto Kroder and Johnson each assigned 1% of his interest to Diana Scott, and thereafter Kroder assigned the remaining 9% of his interest to Diana Scott, and thereafter Diana Scott assigned 5% out of her 11% interest to Walter M. Wells.

From the foregoing it now appears that Johnson now owns a right to receive 9% of the stock of Mina del Refugio, and unless he has in some way transferred or encumbered some part of that 9% interest, he still owns it.

Mr. Jones and I are advised by Mr. Harris that Johnson says that he still owns his 9% interest and that he would like to sell that interest to Mr. Jones and myself for \$4,000. Jones and I are willing to purchase Johnson's 9% for \$4,000 payable in cash

Plaintiff's Pre-Trial Exhibit No. 62—(Continued) :

upon the execution of a proper assignment and transfer, and we are also willing, in order to be entirely fair to Johnson, to give him an option to repurchase his interest at any time within twelve months of the transfer for the same amount we paid for it, without interest. The option may also contain the provision that if he desires to repurchase any fractional part of the 9% within such period of a year he may do so upon repaying a corresponding proportion of our purchase price. However, this option for repurchase is personal to Johnson, is to be exercised in his lifetime and is not transferable by assignment, encumbrance or any creditor's proceeding and is not to pass to his heirs, executors, administrators or beneficiaries.

As I told you over the telephone, much of the equipment which we have sent to Mexico for the Tescalama operation will probably not in any way appear on the Pacific Brokerage Company's records. For example, our first substantial shipment was loaded onto a 1½-ton White truck, and this truck-load of stuff was driven to Mexico, via Nogales, by Johnson himself, and it is our understanding that he arranged the crossing into Mexico, which took place under an export permit which we ourselves had obtained from Washington. I assume this entire crossing arrangement was without any intervention by the Pacific Brokerage Company and the total value of the items covered by this shipment exceeded \$10,000, including the White truck

Plaintiff's Pre-Trial Exhibit No. 62—(Continued) :

itself which Johnson drove down to the mines with its load of equipment, all of which is still in use there. Furthermore, we subsequently sent down a Chevrolet station wagon having a value of approximately \$1,500 and this was crossed without the intervention of Pacific Brokerage Company, as were numerous other items which were consigned directly to Johnson at Nogales and as to which he must himself have arranged the crossing.

We understand that on the customs' records in Mexico all of this material probably stands in Johnson's name as the consignee and the presumptive owner. The fact is, of course, that it all belongs to Mina del Refugio and Johnson's function was entirely that of an agent and trustee. I would assume, therefore, that a bill of sale or other document of transfer and release executed by Johnson in which he recites his capacity as solely that of agent and trustee as regards the title of all of this equipment and transfers such legal title or interest as he may have to Mina del Refugio with a general description of the truck, the station wagon, the Sullivan compressor and other major items, with an added catch-all clause referring to every item of materials, equipment and supplies located at our warehouse in Hermosillo or at the Tescalama mining properties would clear the record in this matter so that there would be no legal question as to its ownership by Mina del Refugio. In case you may want a detailed inventory of the items covered by the first shipment

Plaintiff's Pre-Trial Exhibit No. 62—(Continued) :

which was taken by Johnson to Mexico in the White truck in September of 1944, I enclose herewith a copy of the list.

In addition to the first shipment covered by the foregoing list, we have sent a large number of additional items of equipment, materials and supplies from time to time which were all consigned to Arthur E. Johnson in care of Pacific Brokerage Company. As to many of these items the Pacific Brokerage Company arranged the crossing, but as to most of them Johnson arranged the crossing into Mexico himself. Among these items there were many pieces of equipment representing very substantial purchase prices, and these additional sums aggregate in value considerably in excess of \$10,000. They include a large number of automobile and truck tires, hoists, jackhammers, drifters, stopers, drill columns, and other pieces of mine equipment and supplies too numerous to mention. If you should require a detailed inventory of all of these shipments we could, of course, prepare it, but it would represent a considerable task and we hope that you will not find it necessary.

Our prime interest in this matter at the present time, in view of Johnson's precarious state of health, is to make sure that he executes the necessary documents not only to vest in Mina del Refugio all his legal and equitable title in the mining properties, equipment, materials and supplies, but all of his title and interest in any stock in Mina del Refu-

Plaintiff's Pre-Trial Exhibit No. 62—(Continued) :

gio so that our situation may not be complicated by having to deal with the Mexican woman with whom he has been living down there as his common-law wife. We don't know just what rights she may have under the laws of Mexico as a common-law wife; in fact, we do not know but that he may have legalized her status by a formal marriage ceremony under Mexican law. In any event, you will understand that we desire to be protected against any complications arising from this source so far as our operations and properties are concerned down there and particularly so far as Johnson's stock interest in the corporation is concerned.

Please feel free to communicate with us about this matter by collect telephone calls or telegrams if you desire further information or data from us.

With kindest regards, I am

Sincerely yours,

JOHN C. HIGGINS.

JCH:JA

Enclosures

P. S. You will note that the agreement between Johnson and Jones and myself under date of August 31, 1944, not only established his initial interest as 10% and fixes his capacity as our agent and trustee, but also provides for the opening of the account at the Banco Nacional de Mexico in his name as trustee. In the present circumstances it is, of course, highly desirable that this bank account be

Plaintiff's Pre-Trial Exhibit No. 62—(Continued):

transferred to Mina del Refugio. When Johnson becomes available I suggest that you advise the Banco Nacional of our desire to make this change and we will also write them directly in that connection. If you will arrange that the necessary documents for Johnson's signature be sent directly by the bank to you so that they will be available as soon as Johnson is able to come to Nogales or so that they can be sent with the necessary instructions by you to Johnson at Tucson, we will see that the bank gets whatever written authority or instructions as may be necessary in this connection from us. Augustus J. Klamt, our engineer now in charge at the mine, is authorized to draw checks against this account and we will advise the bank that he will be also authorized to draw checks against the account when it is transferred to the name Mina del Refugio. For the present, in addition to whatever documents may be necessary for Johnson to execute concerning the transfer of the account to Mina del Refugio, probably all that will be necessary is to have Johnson clearly acknowledge the fact that he has no interest in any of the funds in this account and no rights concerning it except those of an agent representing the company and Jones and myself.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 63

March 25, 1946.

Air Mail

Mr. Arthur E. Johnson,
c/o Mr. Victor Verity,
615 Valley National Building,
Tucson, Arizona.

My dear Johnson:

We have just received the executed copy of your assignment of your interest in Tescalama and the Mina del Refugio stock, and I enclose herewith our check for \$4,000 covering the purchase price, in accordance with the contract and your arrangement with Mr. Harris.

We are exceedingly sorry that your illness has proved to be so serious, and we hope that the x-ray and radium treatments may bring you through and restore your health to the point where you may again get back on the job at the mine.

The assignment you executed was signed before our letter of instructions reached Mr. Little and it, therefore, did not contain the reservation to you of the right to redeem this stock. We want to assure you, however, that if you should desire to repurchase your interest at any time within a year from now you may do so upon repaying our purchase price of \$4,000 without interest; or if you should desire to repurchase part but not all of the stock you may do so upon repaying such part of our purchase price from you as may be pro rata to the portion of the stock you desire to repurchase. This

privilege of repurchase is personal to you and cannot be exercised by anyone else through assignment or otherwise.

Please feel free to call upon us to do anything within our power to help you through this difficult experience. We know how greatly worried you must be and we would be glad to do anything possible to be of assistance.

With kindest regards and best wishes, I am

Sincerely yours,

JOHN C. HIGGINS.

cc: C R Jones

D E Harris

JCH:JA

Enclosure

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 64

May 16, 1946.

Dear Walter:

Enclosed herewith please find copy of letter which I have dispatched to Mr. Juan Robinson of Hermosillo in which you will note I have asked him to reply to you direct, requesting that he send me a copy of the letter.

As I told you on the telephone, I believe his mine has merit. He made a trip to New York last November or December to clear up the title on this property, and when a Mexican spends his own money on mining property you may rest assured that he has reason to believe that he will come out all right.

Regarding our own property, we are exploiting another claim called "Ana Estella." To date there is very little progress to report on any volume of tonnage, but the narrow vein which we have uncovered shows very good values. It is quite possible that this might be an extension of the Tescalama vein and could open up considerable tonnages. We probably have less than half a dozen men working on this new vein and the balance of our crews have been engaged in road building, excavation for the mill and working on the water supply for the mill. All materials have been ordered for the mill, and with any luck at all, we should be in production by September 1.

I do not know whether or not the news has reached you that Johnson is ill in Tuscon with cancer of the esophagus. He probably will never be

back on the job. With all due respect to Johnson, it is a much smoother operation and work is progressing better under Mr. Klamt's direction, our engineer, than it ever has before. I am much more enthusiastic over this enterprise than when I saw you in New York in November.

You asked me over the phone whether or not I would be willing to sell my interest in Tescalama. In talking with Mr. Higgins, if your associates would really want to get down and talk business, I believe that we would entertain a proposal, but it would cost \$500,000 for our interest. We bought Johnson's interest when it looked like he was not going to last very long, so that Higgins and I are the only stockholders, other than your New York interests.

This figure mentioned may seem very large, but the ore that we have blocked out, together with our present investment does not make it look so exorbitant.

With kindest personal regards, I am

Sincerely yours,

Mr. Walter M. Wells,
71 Broadway,
New York City,
New York.

JOURNAL ENTRIES

No. 6036 65

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No. 6048

JOURNAL ENTRIES

FORM 10-500 (1-44) (REV. 1-44) (PRINTED AT THE BUREAU OF PRINTING, WASHINGTON, D.C.)

ACCOUNTS PAYABLE		ACCOUNTS RECEIVABLE		DATE	ACCOUNTS	GENERAL LEDGER		SHIP LEDGER	
Dr.	Cr.	Dr.	Cr.			Dr.	Cr.	Dr.	Cr.
13850	98	817	2179.29	1946	Ship Ledger. Vacation Cases -	247886	26450496	24588517	33523
					Accounts Receivable			2341.47	
					Vacation Reserve - Janssen		38344		
					Vacation Reserve - Long Johnson		798560		
57898					A. Janssen				
57941					A. Janssen				
57993					Otto Rie				
51416					H. E. Schulte				
13251					E. J. Janssen				
		57898			A. Janssen				
		57941			A. Janssen				
		57993			Otto Rie				
		51416			H. E. Schulte				
		13251			E. J. Janssen				
					George Campbell				
					First Natl. Bank.				
					B. & W. B. Payroll Drafts - cancell outstanding				
					Ship P. L.				
					First National Bank				
					Ship P. L.				
					Columbia River Steamer Co.				
					Langview Steamer Co.				
					Otto Rie				
					H. E. Schulte				
					Wm. H. Hall				
					Wichitaw				
					General Pass				
					Employees - Otto Rie				
					" H. E. Schulte				
					" Wm. H. Hall				
					Wichitaw				
					Ad. Pass Employees				
					Lumber Wages				
					Ad. Pass				
					Wichitaw				
					Employees etc. Payable				
51647	77135	12324	3860319			2433151	27612216	28829993	33523



JOURNAL ENTRIES

No. 6490

ACCOUNTS PAYABLE		ACCOUNTS RECEIVABLE		DATE	ACCOUNTS	GENERAL LEDGER		SWIFT LEDGER	
Dr.	Cr.	Dr.	Cr.			Dr.	Cr.	Dr.	Cr.
		117	2,779.99	Dec 31	Don Mackay		2708.58	2773.14	19673
					Henry Stephens			675	
					Erin			340.64	
					Selford Strickton			24.41	
					John Martin Miller			110.00	
					Argentine			6.98	
					Amadorke Kitting			64.56	
					September			4.66	
					Erin Sullivan			48.64	
					Moby			39.16	
					Monroe Kelly			24.49	
					Materials			145.61	
					Living Materials		77.58		
					Supplies		738.05		
					James		240		
					Repaid Loan		78.51		
					Accrued Interest		78.51		
					Interest Income		14.45		
					Accrued Interest		14.45		
					Interest Income		408.82		
					Notes Receivable - Mrs. Del Refugio		60.82		
					C. R. Jones		1833.78		
					C. R. Jones		1833.78		
					C. R. Jones		5000		
					Property Rental Revenue		1500		
					C. R. Jones		758		
					Oregon Physicians Service		250		
					Columbia Bond Investment				
					C. T. Long rapier				16.00
					Comm. of P. D. Baker				54.50
					Wm. Pappas				
					Insurance - comm.		91		
					Marshall Wells Co				
117.50	11	117	2,779.99						
						22958.62	764.50	24511.57	335.00



	✓			1138860	1
	60122			650667	2
EN 46703.18	60132	83	19536	1859691	3
	60162	13	84703	397839	4
63,078.31	60192	10	72675	377546	5
80009.44	60222	22	35955	607842	6
86345.75	60252	10	41063	407432	7
17-25.01	60282	18	27715	1497789	8
90607.29	60332	11	40748	449520	9
(3088.48)	60372	12	10532	11180109	10
7879.94	60412	14	71678	374786	11
10,401.44	60442	9	67863	715713	12
	60472	10	41953	904747	13
9874.7	60522	33	36856	5507132	14
✓		9	87476	26044173	15
		260	44173	26044173	16
					17
	✓			987476	18
Q - 6700.35	60522	31	75013	2857622	19
EV - 3812.26	60562	12	56203	7156203	20
		44	31296	967474	21
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	60612	12	73818	1152915	24
	60642	36	620	275400	25
	60662	15	000	7120007	26
	6066A	3	000		27
	6066B	200	000		28
	60682	12	376		29
20635.75	60682	25	990		30

1946

1	Jan 1	Balance
2	10	Dividend - W. J. Jones & Son, Inc.
3	31	JE 6013a
4	Feb 18	JE 6016a
5	Mar 31	JE 6019a
6	Apr 30	JE 6022a
7	May 31	JE 6025a
8	June 30	JE 6029a
9	July 31	JE 6033a
10	Aug 31	JE 6037a
11	Sept 30	JE 6041a
12	Oct 31	JE 6044a
13	Nov 30	6047a
14	Dec 31	6050a
15		To Balance

1947

16		
17		
18	Jan 1	Balance

19	Jan 31	
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20	Feb 28	
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21		
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22	Mar 31	
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23	Apr 30	
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24	May 31	
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25	31	
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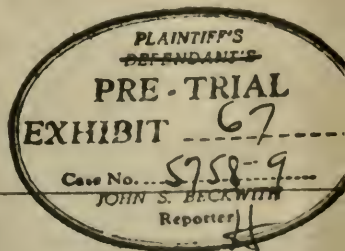
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29	31	
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30	31	
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	c 4455			3091.58
	ckR	7372.29		
	6069P	501.76		
	6069Q	153.00		
3937.42	6069A	366.20		2000.00
4637.42	6071F	700.00		509.58
	6072	729.00		
	6076	647.55		200.00
	6077	366.20		2000.00
	6077	300.00		
	ck11	2004.08		
	c 4459			10943.18
65.07	6078	150.00		
	4464	3299.80		19234.76
	ckR	8017.06		84457
	6087E	694.00		
158.62	6085A	313.62		
	6085G	41237.40		19079.33
	6085G	150.00		
	6085G	366.20		2000.00
2677.02	6085G	300.00		
	c 4468	41756.60		21079.33
	ckR	12481.90		7280.50
	6088G	664.00		
	6089C	1000.00		
	P.C.	150.00		
	6089L	366.20		2000.00
	6089L	300.00		
5404.10	6089L	55764.31		30359.83
	4472			1322.41
	ckR	12654.30		
	forward			

Analysis of August, 1946 Entries to Account of Clayton R. Jones

	Dr.	Cr.
L. D. phone calls	\$ 14.49	
United Air Lines	85.68	
Withheld Income Tax on salary	366.20	
Oregon Physicians Service	2.50	
Property Rent	150.00	
Cash Advances—Misc.	1,986.45	
Cash Advances for deposit to Jones & Higgins acct.	9,500.00	
Salary—W. J. Jones & Son		2,000.00
Salary—Rothschild-International Stevedoring Co.		495.00
Salary—West Oregon Terminals		1,000.00
Repairs to property owned by W. J. Jones & Son		261.11
Entertainment expense for W. J. Jones & Son		300.00
Travel expense for W. J. Jones & Son		147.55
Auto damage expense for W. J. Jones & Son		11.70
Mina del Refugio Notes assigned to W. J. Jones & Son		102,930.96
Mina del Refugio Interest assigned to W. J. Jones & Son		4,654.57
Totals as of August 31, 1946.....	<u>\$12,105.32</u>	<u>\$111,801.09</u>

Analysis of December, 1946 Entries to Account of Clayton R. Jones

United Air Lines	9.62	
Northwest Air Lines	272.10	
L. D. phone calls	24.90	
Withheld Income Tax on salary	366.20	
Property rent	150.00	
Oregon Physicians Service	2.50	
Cash Advances—Misc.	27,543.24	
Cash Advances for deposit to Jones & Higgins account	5,000.00	
Salary—W. J. Jones & Son		2,000.00
Salary—Rothschild-International Stevedoring Co.		495.20
Salary—Sumpter Valley Dredging Co.		916.80
Salary—West Oregon Terminals		1,000.00
Insurance dividend		214.04
Linnton Terminals partnership profits		1,500.00
West Oregon Terminals partnership profits..		1,500.00
Interest on U. S. Treasury Bonds		3,562.50
Cash Advance reimbursement		25,000.00
Mina del Refugio Notes assigned to W. J. Jones & Son		18,832.78
Totals as of December 31, 1946	<u>\$33,368.56</u>	<u>\$ 55,021.32</u>

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 68

April 4, 1947.

Mr. Walter M. Wells,
c/o Isthmian Steamship Co.,
71 Broadway,
New York, N. Y.

Dear Walter:

I returned from the mine a week ago today and upon my arrival I cashed the first six bricks from the mine, which amounted to about \$7,000 American.

I enclosed herewith snapshots which I took of the six bricks and the mill. The mill was shutdown when I got there on account of some worn out parts, and I do not expect it will get started before next week.

The mill is gradually getting shaken down, but it has been a much longer process than would normally occur in the states. Things just don't move fast down there due to the remote location and the poor communication system. We are installing a radio-telephone at the mine and one at Hermosillo which will facilitate a lot of delays. The mine itself looks as good as it ever did.

Best regards.

Sincerely yours,

CLAYTON R. JONES.

CRJ:KJ

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 69

1030 Public Service Bldg.

August 4, 1947.

Mr. Juan F. Robinson,
House 144,
Calle Hidalgo,
Hermosillo, Sonora,
Mexico.

Dear Mr. Robinson:

I have telegraphed you today as follows:

We Are Ready to Make Final Payment For Properties Under Our Contract With You. We Assume You Will Want Mr. Little at Nogales to Handle Final Transaction and Prepare Necessary Papers. Please Wire Us Immediately at 1303 Public Service Building Portland, Oregon, Whether You can Be in Little's Office in Nogales to Receive Final Payment and Execute Final Deed on Monday, August Eleventh. If So, Please Advise Mr. Little Immediately and Also Procure and Take With You to Nogales Necessary Power of Attorney for Jorge and Ana to Execute Deed for Them. Please Also Wire Us Your Calculation Amount of Final Payment Due You After Royalty Deduction.

We assume that the arrangement for the final closing of our purchase transaction with you at Mr. Little's office in Nogales will be satisfactory to you, and upon hearing from you by telegram to

that effect we will transmit the money to the Valley National Bank at Nogales so that the payment can be made to you upon the execution of the final papers.

We discussed this matter over the telephone with Mr. Little today and he advised us that he would be prepared to meet you at his office at Nogales on next Monday, August 11th, to handle this transaction in your behalf and ours. We both have confidence in him and since he has acted as attorney in this matter throughout and is familiar with all details of the transaction and thoroughly competent to protect both your interest and ours in the preparation of the necessary documents, we feel sure you will approve this method of handling the matter.

Since the final deed must bear the authorized signatures of Jorge and Ana as well as yours, Mr. Little suggested that you should be sure to procure and take with you to Nogales the necessary power of attorney executed by Jorge and Ana empowering you to execute the deed for them.

It is our understanding that since the original contract was made with you some additional mining claim locations or denouncements have been made by you or Jorge in our behalf which are to be included in the final deed to us. If we are correct in this understanding, please be sure to take with you to Nogales all necessary information and descriptions of this additional ground so that it may be included in the deed to be prepared by Mr. Little.

With assurances of our kindest regards and our appreciation of your uniform courtesy and cooperation in our transactions with you, I am

Sincerely yours,

JOHN C. HIGGINS.

JCH:JA

Airmail

CC to Mr. Clayton R. Jones

CC to Mr. Malcolm C. Little

CC to Mr. E. C. Smith

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 70

Mina Del Refugio, S. A.

January 15th, 1948.

Mr. John C. Higgins,
1303 Public Service Bldg.,
Portland 4, Oregon.

Dear Mr. Higgins:

Enclosed is a copy of my telegram heartily approving your arrangement with Paul Avery, who was a classmate of mine at Stanford. He is well known and has a fine reputation among mining men in Mexico. After all this hectic make-believe efficiency and doctoring tonnages and mill sampling to suit the supervisor for high rates of recovery at the expense of proper weights and head samples, it will be a relief to have competent supervision by a technically trained chemist and mill operator.

As our rich ore has already been put through the mill it becomes necessary to expenses at all points if we are now to continue milling our lower grade ores without the sweetening for uniform grading which we had counted on from the 200-level ore body. By eliminating Ramsden and turning his duties over to a day-shift boss we can probably save 1500 pesos monthly and by further trimming down the mill crew we hope to make a fair saving.

Our good Tescalama ore shoot was much shorter on the 260-level and definitely quit on its northerly course at the beginning of the caverns on the same level 168 ft. north of the winze. On its downward course the ore also quit, reaching its deepest point only 20 ft. below this level. Our most northerly winze, now used for transferring ore from the lower levels up to the 153-level, was continued to the 300-level, the vein changing from ore to gouge and, near the 300-level, to 26 inches of pure coal.

As the distance at present between the end of the Tescalama 260-level and the Ana Estela Tunnel level is now about 500 ft. with a difference in elevation of about 165 ft., this unexplored area seems to offer the best chance for finding more ore because the Ana Estela and Tescalama are quite definitely the same vein. It is also quite probable that the Oro Grueso Tunnel is on this vein.

Since our Ana Estela Incline Shaft at its present bottom is still in a strong gougy vein with non-commercial values, present slope depth about 115 ft., we are checking its prospective phases either

for deepening it or running a shaft drift south at this depth to see if we may pick up an extension of the ore that quit above this level. We also have in mind the sinking of this shaft to a depth necessary to make the connection with the 260-level of the Tescalama by drifting south. As no other vein outcrops have been found below this vein system we believe that it is best to confine our major work on it.

We are also doing some sampling in the old Candelero Mine which Juan Robinson and Sr. Rendon, owners, have invited us to test.

We gladly look forward to Paul Avery's arrival.

Yours very truly,

/s/ A. J. KLAMT.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 71

March 9, 1948.

Personal

Mr. Walter M. Wells

c/o Isthmian Steamship Co.

71 Broadway

New York, N. Y.

Dear Walter:

I returned from Mexico and California about ten days ago and immediately came down with an attack of influenza and have just about recovered from same. I finally secured the Profit and Loss Statement, together with financial statements of the company yesterday and I am hastening to forward

it on to you. All in all, this company is a very sorry picture.

After taking our depreciation, depletion and organization expenses, there was a loss last year of a little over \$20,000. I would not be so disturbed about this loss as we had a terrific year due to breakdowns and the ordinary troubles starting up a new mill, but what does make our picture look black is that they have discovered no new ore bodies, with the exception of one on which we are now working, in over a year. When we blocked out this ore, Mr. Klamt, our engineer, took what is known as an "Engineer's License" and projected the ore past the known limits. His estimation and calculations both as to ore reserves and ore recoveries fell down at least 60%.

I smelled a rat in his letters which started to come in about the first of the year and, although there was nothing definite, I went down immediately and found out what I had suspected, that we were using up our ore with no new ore to take its place. This long distance management is a very difficult situation and, although I do not believe Mr. Klamt willfully led us astray, his judgment was very, very bad.

At the present time I believe that we can run about a year on the known ore that we have, but unless they turn up with some new ore bodies this project is going to be a colossal failure. I had no idea of this situation until shortly after the first of the year. We have had innumerable troubles getting out a financial statement due to the translation

of our Mexican bookkeepers into American phraseology, plus the fact of the necessary delays in sending data from the mine to our Hermosillo office and then on to Portland.

I am planning to leave again for the mine in about a week or ten days to see at first hand what they are doing on some exploitation work which I outlined while I was there. We are pumping an old mine which is full of water, which we purchased at the time we bought our present property, and are going to explore that in the hopes that we can uncover some new ore. You will be hearing from me about this later.

I saw Alice and George Lilly in San Francisco and thought George looked a little tired. I think this trip to Honolulu is going to be a fine vacation for him and should do him a lot of good. I plan to be in New York sometime before summer, but do not have any definite plans at the present time.

I trust that the enclosed information will not be too great a shock to you, but it certainly was a bad one for me when I first suspected what was taking place.

With kindest personal regards, I am

Sincerely yours,

CLAYTON R. JONES.

CRJ:KJ

Enclosure

Airmail

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 72

Mina del Refugio, S. A.

April 1st, 1948.

Mina del Refugio,
Portland, Oregon.

Dear Sirs,

Liquidation No. 25

We are this morning melting the clean-up of mill-run from March 16th to March 31st. The numbers of these bars will begin with No. 100. It will probably be a week before we receive first payment.

Prior Liquidations

No. 24: Bar #98 was recovered from the washings from precipitation bags. Bar #99 was the result of melting the remainder of the scrapings from the shell of the ballmill, the first part of which was made into Bar No. 94.

The status of order of bullion payments received to date:

Pesos

Most recent 1st or down payment (Adelantos), Mar. 24th, Liq. #24.....	5,925.38
Most recent 2nd or Official Assay Adjustm't, Mar. 18th, Liq. #22.....	9,057.57
Most recent 3rd or balance after silver tax, Mar. 18th, Liq. #16.....	15.90

The checking of the ultimate settlements with exactitude is a tedious job and can be done only in absence of more pressing work. In past completed

Plaintiff's Pre-Trial Exhibit No. 72—(Continued) :

settlements the calculations appear to have been done quite thoroughly. The months of waiting for their determination of the exact metal price and applicable tax rate delays the precise checking of the completed settlements. Their injected complications absorb time.

The six bars of varying sizes, Nos. 100-01-02-03-04-05, forming Liq. No. 25, promise very good weight and quality, from present appearance while being cast.

Exploration

We are naming the flat vein development above the 153-level as developed in all of our footwall crosscuts from No. 1 to No. 8 as the "115- Level North." In elevation this corresponds to the old 115-level south of the main haulage shaft.

We at first began this work on the most meager indications by noting carefully any fugitive stringers of quartz entering the footwall of our vein drifts, then driving footwall crosscuts and on their resulting indications, driving raises on the stringers. The results were very pleasing, confirming a ladder-like vein structure expressed in our early examinations and likewise compensating by outward bulging ore extensions for the inward bulging waste masses of our straightline ore blocks used in forming our ore estimates at a time before we had the raises and winzes necessary properly to delineate the sinuous form of any orebody.

As some of our mainway levels in the Tescalama

Plaintiff's Pre-Trial Exhibit No. 72—(Continued):

and Ana Estela have already passed out of the course of the known oreshoots at points where there are vague signs of transposition we believe it the least expensive, most direct and promising method to apply the crosscut and raise method from existing level extensions for picking up possible vein transpositions. This is the plan we are using.

Liq. #25 (Continued)

As Bars Nos. 100 to 105, inclusively, have just been weighed, and in our assayer's task of giving us their fineness, their weight only can at present be given, as follows:

Bar No. 100	33.5 kilos
Bar No. 101	23.5 kilos
Bar No. 102	24.0 kilos
Bar No. 103	30.0 kilos
Bar No. 104	37.0 kilos
Bar No. 105	5.2 kilos
	<hr/>
	153.2 kilos

The assays will be ready later this afternoon and the bars will be in the Banco de Mexico tomorrow morning.

Exploration (Continued)

In the Ana Estela we have 10 men, all being on production. As we are keeping our Tescalama crew alternating week by week from production to exploration we are at present keeping the small crew on the Ana Estela on straight production, which often leads to other obscured orebodies in the por-

Plaintiff's Pre-Trial Exhibit No. 72—(Continued) :

phyry formation. The ore in the Ana Estela is nearly entirely in the porphyry, while that in the deeper Tescalama is usually in the replaced coal seam in the shale formation.

Mill Operation

This is going ahead steadily and smoothly. All jealousies, contentions and confusion—and excessive expenses—seem to have vanished with the exit of Ramsden. All hands work together without friction as they should in an organization.

About two-thirds of the ore is coming from the Tescalama and the rest from the Ana Estela.

Your daily mill reports will furnish the details of the mill operation.

Water Supply

Because of the continued drouth I yesterday inspected the supply at the Arrellanas and found that it is maintaining its flow without any threatening decrease. We are pumping steadily at rate of 10 gallons per minute and leaving the intake dam overflowing at about 4 gallons per minute.

While replacing the head gasket and grinding the valves on the Waukashe gasoline motor we pumped from the Goteras two days.

Please have the Waukashe agent furnish us promptly the parts catalogue for this motor. Its identity is Model ICK 5110V-No. 89476. We shall appreciate the pamphlet or booklet giving a more

Plaintiff's Pre-Trial Exhibit No. 72—(Continued):
complete description of its possible performance.
We wired your office for two sets of gaskets for this
motor.

Yours very truly,

/s/ A. J. KLAMT.

Mr. Avery on Carbonaceous Ores

As I had asked Mr. Avery to make some mention of the effect of the carbonaceous shale and carbon contents, coal, graphite, etc., in the ores, I find that his reports do not make any reference to this subject. However, I discussed this matter with him and he replied that his tests showed no appreciable harm to the metallurgy from these carbon contents and that they probably were comparatively ineffective in precipitating any measurable values from the pregnant solutions. This answer was quite reassuring to me because most of the ores in the Tescalama carry some kind of combined carbons, presumably too tightly fixed in their molecular combinations to be released in the alkaline cyanide solutions. Therefore he left me with the impression that in his opinion the various carbonaceous materials in the ores are almost harmless in our milling process.

Noche Bueno Operation

Although pumping steadily at the rate of 35 gallons per minute, 24 hours daily, the lowering of the water during the past two weeks seems to have gone

Plaintiff's Pre-Trial Exhibit No. 72—(Continued):

down only about one inch per day. In about an hour of pump stoppage for servicing the water rose quickly several inches.

This makes it appear that some greater source of inflowing water with a water table about 70 feet below the surface collar of the shaft exists. This makes our efforts with the 35-gallon capacity pump look like an unsuccessful task. Therefore, we may have to go in for a larger pumping installation. However, I shall make some more conclusive observations before making any definite recommendation.

As we are using the Goteras equipment for this Noche Bueno dewatering, it leaves us without a ready water supply in case something should happen to our Arrellanas plant, although we try always to have about two days' water supply in our storage tanks at the mill.

In case we should find it necessary to restore the pump to the Goteras, would this have your approval?

Yours very truly,

.....,

A. J. Klamt.

Mr. Sanchez is doing very well and is a splendid cooperator. We are trying to reduce mill expenses and increase efficiency wherever possible.

/s/ A. J. K.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 73

April 8, 1948.

Mr. A. J. Klamt,
Mina Del Refugio, S. A.,
Apartado 22,
Hermosillo, Sonora,
Mexico.

Dear Mr. Klamt:

I wish to acknowledge your letter of April 1st. I take it from your paragraph under the heading "Exploration," that you have not had any success in discovering any new ore bodies on the Crosscut No. 9 on the 153 Level, or any new on the 115 Level North, which you were calling Crosscut No. 8 while I was there. Please keep us fully advised each week on your exploration activities.

I was indeed disappointed to learn that your pumping operation is already lowering the Noche Bueno operation one inch per day. Did you get down to the first level, which was showing up when I was there? We want you to keep us advised in detail of your operations in this shaft as we are pinning a lot of hope of finding new ore in this old mine.

You ask us the very obvious question as to whether or not we would approve restoring the pump to Goteras in case it is necessary. This is a very obvious question as we must keep the mill operating and we cannot do so without a water supply. I cannot understand your evidently disturbed thoughts regarding the Arrelanas water after we went through such a dry summer as last year.

Our instructions to you are to keep pumping on Noche Bueno until it seems like a fruitless operation. If you will remember, Goteras at one point of our pumping only went down a little bit and then it dried up very quickly. Maybe we will find a similar condition in Noche Bueno.

Please keep us advised weekly as requested by me on my last visit.

Your very truly,

CLAYTON R. JONES.

CRJ:KJ

cc: J. C. Higgins

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 74

Telegram
Western Union

W. J. Jones & Son, Inc.

November 15, 1948.

Mr. A. J. Klamt,
Mina del Refugio,
Corner Calle Iturbide Yavenida Yucatan,
Hermosillo, Sonora,
Mexico.

Higgins and I Request You Commence Dismantling Mill Immediately Transporting All Supplies and Materials to Our Corral in Hermosillo. Your Instructions Are to List Each Truckload in Detail Leaving Mine and Have Smith Check in Detail and Receipt Advising Portland Office of Quantities

Shipped Each Week. We Desire You Salvage All Possible Materials Especially Lumber for Resale at Hermosillo. We Suggest You Bring Pipe in First and Advertise Quantity and Sizes in Hermosillo Paper. You Will Telegraph Offers to Portland for Confirmation.

CLAYTON R. JONES.

CRJ:KJ

cc: Mr. J. C. Higgins

4:50 p.m.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 75

December 27, 1948.

Airmail

Mr. A. J. Klamt,
10601 Wilkins Avenue,
Los Angeles 24, Cal., and
841 Iturbide,
Hermosillo, Sonora, Mexico.

Dear Gus:

I enclose herewith 2 copies of the Agreement as discussed with you over the telephone today. Please sign the original ribbon copy on the blank line for acceptance and confirmation and airmail it back to me. I am also airmailing 2 copies to you at Hermosillo in case you miss the ones addressed to you at Los Angeles, and if so, please sign and return by airmail one of the tissue copies.

You are authorized to make such arrangements

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):

with employees, as to their wages, tenure and working conditions as you may determine to be necessary or expedient, for the period commencing with Jan. 1, 1949, since they will then and thereafter be your personal employees and not the employees of the company. If you should determine that any of the persons heretofore employed by the company are to participate with you, on a profit-sharing basis or otherwise, in this contract, and if you should not be able to make a mutually satisfactory arrangement with any one or more of them, and if you should desire that we act as mediators to settle such disagreement, we shall be glad to do so, but there is no obligation on your part to submit such a disagreement to us, since under the terms of our contract with you in this matter, it is within your right and power to make such arrangements with them as you may decide.

Yours very truly,

JOHN C. HIGGINS.

JCH:lu

Copy of this letter
and the Agreement to
Mr. C. R. Jones.

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):

Mina Del Refugio, S. A.

December 27, 1948.

Airmail

Mr. A. J. Klamt,
841 Iturbide—and
10601 Wilkins Avenue,
Los Angeles 24, California.

Dear Gus:

This will confirm the agreement Jones and I, as officers and directors of Mina del Refugio, S. A., made with you over the telephone today concerning the dismantling of the mill, the transportation of the mining and milling equipment and supplies to Hermosillo, the payment of the costs involved, the sale of the equipment and supplies and the disposition of the proceeds therefrom, which agreement is as follows:

1. It is agreed that you are to be in full and complete charge of the foregoing proceedings, at the Mexican end, subject only to the conditions and limitations hereinafter stated.

2. You are to complete the dismantling of the mill and the transportation of all mill, mining and other equipment, materials and supplies to the corral in Hermosillo as promptly as possible, except in cases where purchasers may take delivery at the mine.

3. By December 31, 1948, if possible, or as soon

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):

thereafter as it can be accomplished, you are to pay from the company's funds on hand, or in bank, all of the Company's outstanding accounts, pay rolls and liabilities, and you are to transmit to the Valley National Bank, the full balance of any funds then on hand in Hermosillo for deposit in the account of Mina del Refugio, S. A., except that you may retain, as a revolving fund, in the bank at Hermosillo, a balance of \$5,000 pesos, or its equivalent in United States currency, for your convenience in meeting local expenses involved in the dismantling, shipping, handling and sale of the equipment, materials and supplies. This revolving fund is to be charged to you personally, and is to be accounted for to us as an addition to the \$20,000 net to be paid to us from the proceeds of the sale of the equipment, materials and supplies, as stated below.

4. All costs, charges and expenses incurred or accruing on or after Jan. 1, 1949, arising out of or connected with the care, handling and disposition of the company's properties, equipment, materials and supplies in Mexico, are to be charged to your account. This includes, among other things, all costs and expenses involved in the dismantling of the mill and other equipment, the transportation thereof to Hermosillo, or elsewhere, the storage thereof in Hermosillo, or elsewhere, the sale, delivery or other disposition thereof to others, all pay roll charges incurred or accruing on and after Jan. 1, 1949, and all rentals on the corral or insurance or other charges on the equipment, materials and supplies.

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):

5. You are to make full and detailed weekly reports to us of your progress in these matters. Such reports shall cover, among other things, the following:

(a) Progress in dismantling the mill and transporting the equipment to Hermosillo.

(b) All sales actually consummated, covering the items sold and the amounts received.

(c) The disposition of all cash received, whether deposited in Hermosillo or the Valley National Bank at Nogales.

(d) All other matters substantially affecting the progress you are making in disposing of these assets, including such offers as you may receive from prospective purchasers, or such offers of sale as you may make on items of equipment, materials and supplies, in instances where the purchase or sale price amounts to \$500 or more. Since we are interested in the result of your sales, to the extent of seeing that the net proceeds finally available to the company, or to us as its principal creditors, amount to \$20,000, we reserve the right to reject or confirm, before consummation of any sale, offers of sale or purchase where the amount involved in the proposed transaction, equals or exceeds \$500.00. Of course, it is not practicable for us from here at this time to define more closely the proposed offers of purchase or offers of sale which are to be submitted to us before consummation, except by the general definition just stated as to amount involved, but there

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):

is to be included in this category every proposed sale where the original cost to the company of the items involved in any proposed sale amounted to \$500 or more.

6. It is agreed that you are to pay to us, as trustees for the company, the first \$20,000 received by you on account of such sales and that you are to retain all proceeds of such sales exceeding that total amount. From the amount you so retain, you are to pay all your costs and expenses in this regard, incurred or accruing on and after Jan. 1, 1949, and the balance will be your compensation for your time and efforts devoted to this matter, on and after Jan. 1, 1949.

7. The proceeds of all sales, up to a total of \$20,000 are to be remitted as soon as received by you, to the Valley National Bank at Nogales, Arizona, for deposit in that Bank to the joint account of Clayton R. Jones and John C. Higgins, trustees, and after such remittances have reached the total sum of \$20,000 you need thereafter make no further remittances, and no reports of offers, sales or progress, since the balance of the proceeds will belong to you. There will be credited against the required total of \$20,000 to be remitted to the Valley National Bank, the \$5,000 you deposited in that Bank on December 21st, as reported in your telegram of Dec. 22nd.

8. It is, of course, understood that any amounts

Plaintiff's Pre-Trial Exhibit No. 75—(Continued):
which have been heretofore received or may hereafter be received on account of bullion payments, tax refunds or from any other sources except the proceeds of sales of equipment, materials and supplies, are entirely outside the terms of the contract with you as stated and that no such sums are to be credited or applied in reduction of the \$20,000 net payment to us hereinabove mentioned.

Yours very truly,

/s/ JOHN C. HIGGINS.

Accepted and Confirmed:

/s/ A. J. KLAMT.

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 76
Minutes of Special Meeting of Board of Directors
of
Mina Del Refugio, S. A.

A Special Meeting of the Board of Directors of Mina del Refugio, S. A., was held at 10 o'clock a.m. on December 27, 1948, at 1303 Public Service Building, Portland, Oregon.

Present were John C. Higgins and Clayton R. Jones, constituting a quorum for the transaction of business.

Mr. Higgins acted as chairman and Mr. Jones acted as secretary.

Mr. Higgins and Mr. Jones discussed the hopeless

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):

plight into which the affairs of the Company had recently fallen. Mr. Higgins and Mr. Jones reviewed the reports of the Company's engineer, A. J. Klamt. Mr. Jones substantiated the conclusions in said reports from his personal observations made during his visits to the site of the mining operations in 1948, and particularly his last visit there, in November of 1948. On the basis of said reports and observations, which definitely established the exhaustion of all available ore capable of being mined with any hope of meeting operating expenses from the properties now owned and held under lease and option by the Company, and the failure of all plans to find other promising mining properties or to continue or resume milling operations on gambisino, ore, Mr. Jones and Mr. Higgins agreed that the company's mining and milling enterprise should immediately be ended and abandoned, that its saleable assets should be sold, the proceeds distributed to its creditors, its affairs should be wound up and the company should be dissolved.

Mr. Higgins and Mr. Jones then discussed the progress which had been made in dismantling the mill and mine equipment pursuant to their previous decision in the latter part of 1948 to curtail operations. Mr. Higgins submitted a copy of an agreement which he had prepared on behalf of the corporation providing for the sale to Mr. A. J. Klamt of all the structures, fixtures, equipment, and

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):
supplies connected with the mining operations of the Company.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

Resolved, That the agreement confirmed in a letter dated December 27, 1948, from John C. Higgins to A. J. Klamt, a copy of which is ordered to be attached to the minutes of this meeting, be and hereby is approved and adopted by the Directors of the Company, and all acts of Mr. Higgins and Mr. Jones as officers and directors of the Company in entering into said agreement, and all acts of said persons in carrying out said agreement and in taking all steps necessary and proper for the cessation and abandonment of all operations of the company be and hereby are ratified and approved by the Board of Directors.

Mr. Higgins pointed out that the most that could be realized by the Company under said agreement was \$20,000, plus any additional portion of the Company's funds referred to in paragraph 3 of the agreement remaining after payment of the Company's outstanding liabilities. He stated that at most this additional sum, over and above the \$20,000, might amount to as much as \$2,500. He stated that there was no possibility that any sum over \$2,500 would be realized from this source and that the actual amount thus realized would probably be less than \$1,000. He also stated that, in his opinion,

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):

it was very doubtful whether even as much as \$20,000 would be realized by the Company from the sale of the equipment, structures and supplies. It was also explained by Mr. Higgins that paragraph 8 of said agreement was inserted as a precautionary measure and that the Company did not anticipate the receipt of any money after December 31, 1948, on account of bullion payments, tax refunds or from other sources.

Mr. Jones observed that said agreement disposed of all the assets of the corporation with the exception of the real property and mining claims owned by or under lease and option to the Company. Mr. Higgins and Mr. Jones agreed that the real property and mining claims were totally worthless. They were useless to the Company and could not be sold, since such properties have no value because of the exhaustion of all commercial ore deposits. Mr. Jones mentioned that the mine was flooded with water due to the cessation of pumping operations.

Upon motion duly made and seconded the following resolution was unanimously passed:

Resolved, that all real property and mining claims and all interests therein owned or held by the Company be and hereby are deemed to be worthless and the officers of the Company be and hereby are authorized and directed to abandon said property.

Mr. Higgins stated that there remained the question of what distribution should be made of the

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):

funds of the Company to be realized by the Company under the agreement with Mr. Klamt, plus any funds in the bank account of the Company referred to in paragraph 3 of said agreement. It was pointed out that there were outstanding notes of the Company, and obligations for advances and equipment sales to it in the aggregate amount of more than \$300,000 which had been issued and incurred to evidence the obligation of the Company to repay the loans and advances, and for sales of equipment made from time to time by Mr. Higgins, Mr. Jones, and Mr. Dennison Harris and his family. Mr. Higgins expressed his regret that it was necessary to so bitterly disappoint the high expectations of full repayment for these loans, advances and sales, but stated that the most the Company could possibly pay on said notes and other obligations was a pro rated distribution of the above-mentioned sums which could not exceed \$22,500. Upon motion duly made and seconded the following resolution was unanimously passed:

Resolved, that the officers of the Company be and hereby are authorized and directed to make a pro rata distribution to the holders of the outstanding notes and other obligations of the Company of any and all funds of the Company realized under the agreement with Mr. Klamt confirmed in the letter from Mr. Higgins to Mr. Klamt dated December 27, 1948, plus any funds of the Company on deposit in its

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):

bank account after payment of all prior liabilities.

Mr. Higgins stated that the notes and other obligations of the Company, above mentioned, were obviously more than sufficient to exhaust all the assets of the Company so there was no need to make any provision for the stockholders of the Company since said stock under the circumstances was totally worthless.

Mr. Higgins and Mr. Jones then considered what disposition should be made of the corporate structure of the Company which would be nothing more than a hollow shell after December 31, 1948. Mr. Higgins and Mr. Jones determined that they were not sufficiently familiar with Mexican law to decide whether it would be most expeditious to dissolve the Company, or merely to abandon the corporate structure.

Upon motion duly made and seconded, the following resolution was unanimously passed:

Resolved that the officers of the Company be and hereby are directed and authorized to make whatever disposition of the corporate structure of the Company that they deem most advisable, such authority to include dissolution of the Company or abandonment of the corporate structure.

Plaintiff's Pre-Trial Exhibit No. 76—(Continued):

There being no further business, the meeting was adjourned.

/s/ JOHN C. HIGGINS.

.....,

Clayton R. Jones.

The undersigned, a director of Mina del Refugio, S. A., has read the foregoing minutes of a Special Meeting of the Board of Directors of the Company held on December 27, 1948. The undersigned hereby waives any and all notice required by law for the time, place and purpose of said meeting and hereby ratifies, approves and confirms all action taken at said meeting.

Dated as of December 27, 1948.

.....

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 77

I, A. J. Klamt, am a qualified mining engineer, and have been associated with Mina del Refugio, S. A., since the commencement of its activities in connection with the development and operation of its mining ventures in Mexico, namely from 1944 to the present. During the major portion of such time I have carried on the active management of the Company in Mexico. I was and am of the opinion that original surveys for the mining activities, preparation for same, and the early operations of the mine were such as to justify all expectations that the venture would be a most profitable one and that the profits from the venture would greatly exceed any and all of its liabilities. After the mine had been in operation for more than three years, and particularly during the late fall of 1948, it became apparent that the commercial ore deposits had been exhausted and that the venture could not be continued with any hope of meeting operating expenses, much less of making a profit. I have read a copy, attached hereto, of the minutes of a special meeting of the board of directors of the Company held on December 27, 1948, and hereby certify that the action taken by the board of directors at said meeting is in all respects justified and reasonable from a mining and engineering viewpoint.

Dated as of December 27, 1948.

/s/ A. J. KLAMT.

JOURNAL ENTRIES

No. 61280 78

ACCOUNTS PAYABLE		ACCOUNTS RECEIVABLE		DATE	ACCOUNTS	GENERAL LEDGER		TRIP LEDGER	
Ds	Cr	Ds	Cr			Ds	Cr	Ds	Cr
				1941					
				Dec 31	John Kyndlauser Bear				
					Truck Expenses Labor Ore	126209		1446	
					Truck Expenses	32186			
					Truck Expenses	2460			
					Truck Expenses	301			
					Truck Expenses	820			
					Balance Payable Ore		228035		
					Truck Expenses Fuel Ore	1177			
					Truck Expenses	4046			
					Fuel Pickup	1021			
					Automobile Exp	13608			
					Union Sulphur			860	
					Shaurann			3646	
					James Lick			444	
					Beavers Vic			722	
					Saporo			224	
					T. Kyndlauser			1221	
					Shaurann			929	
					St Augustine			688	
					Schierland			740	
					John Cooper			1654	
					St Augustine			1853	
					Merl Marnes			681	
					Bill Bear			179	
					Lambing			172	
					Coal			241	
					Truck Exp Labor Ore		3411		
10081					Materials for Supply 21 ft 12 x 12	1008			
36951					Andrews Trucking Co. Exp	2095			
3141					Automobile Expenses Fuel				
9171					Lined Chevrolet Co				
1742553	1360	19			Automobile Expenses Fuel	384			
					Industries associated				
					Property Expenses	9811			
					Arthur J. Kahr & Son				
						1624009	262167	576281	191



JOURNAL ENTRIES

No. 61282-78

ACCOUNTS PAYABLE		ACCOUNTS RECEIVABLE		DATE	ACCOUNTS	GENERAL LEDGER		TRIP LEDGER	
Dr.	Cr.	Dr.	Cr.			Dr.	Cr.	Dr.	Cr.
				1941					
				Nov 3	John Vigenhausen Gas				
					John Vigenhausen Labor Dec	126.08		1486	
					Life Truck Expenses	32.18			
					Butney Expenses	24.60			
					Garrett Expenses	30.8			
					Winnick Expenses	82.0			
					Salaries Payable Dec		2280.35		
					Doyle Truck Expenses Gas Dec	11.77			
					White Truck	40.46			
					Ford Pickup	10.21			
					Automobile Exp	136.08			
					Union Sulphur			86.0	
					Schumann			36.46	
					James Lick			44.7	
					Beavers Rd			72.2	
					Lapone			22.4	
					T. Vigenhausen			12.21	
					Schumann			92.9	
					St Augustine			6.88	
					Schroeder			74.0	
					John Cropper			16.5	
					St Augustine			18.57	
					Arch. Maxwell			6.88	
					Phil Bear			1.19	
					Lamburg			17.2	
					Coal			26.1	
					Shelton Exp Gas Equip				
					Materials for supply 21 ft 12 x 12	100.8			
					Andrews Wrenching Co				
					Automobile Expenses	20.95			
					Lined Chevrolet Co				
					Automobile Expenses Jan	38.4			
					Liquidated Associates				
					Thompson Expenses	9.87			
					Arnold J. Kahr & Son				
				1941					
100.8									
30.95									
38.4									
98.77									
1941	1260	19				1624009	262107	5762.81	19



260

JOURNAL ENTRIES

FORM 10-000 9-88 BEST COPY PRINTING & SERVICE CO. (202) 462-6130

ACCOUNTS PAYABLE		ACCOUNTS RECEIVABLE		DATE	ACCOUNTS	GENERAL LEDGER		SHIP LEDGER		
Dr.	Cr.	Dr.	Cr.			Dr.	Cr.	Dr.	Cr.	
200 ✓				1918	Best Shipper And Cart - ^{camel} transporting	✓	200			
200 ✓					Advertising - Pacific Shipper - Mrs	✓	1000			
1000 ✓					Pacific Shipper -					
600 ✓					Legal Expense - H. B. O. Mr. L. Staines	✓	600			
15000 ✓					Wilbur, Buckett, O. Mr. S. -	✓	15000			
19048 23					O. C. & W. P. Coal Sales - Storage			1306739 ✓		
					" " - Insurance			59150 ✓		
					" " - Labor - bunker crew			2475 ✓		
					" " - Unloading coal from			60587 ✓		
					" " - Equipment & repair			42408 ✓		
147642 ✓					The Commission of Public Docks.					
					O. C. & W. P. Coal Sales - Coal -			3647999 ✓		
					Portland Coal Transportation	✓	3647999			
					O. C. & W. P. Coal Sales - Freight			4009418 ✓		
					Portland Coal Freight Insurance	✓	4009418			
					O. C. & W. P. Coal Sales - Insurance for coal shipment			1440821 ✓		
1277466 ✓					Insurance for coal shipment	✓	1440821			
					Commission of Public Docks - Insurance for					
					Insurance for storage on Coal on Hand	✓	1277466			
					O. C. & W. P. Coal Sales - Insurance on bunker coal			56722 ✓		
					Insurance on bunker Coal - transport	✓	56722			
					Coal Loading					
2157102		1800		19	Coal Loading	✓	6321912		6321912 ✓	
					Bad Debt -	✓	14333021			
					Notes Receivable	✓	12176374			
					Interest Receivable	✓	2156647			
					Charging off the bad debt, discount					
					Mineral Refuge Notes Receivable					
					and their accrued interest 12/24/18					
2157102		1800		19			21114027	22252585	9616973	6321912

DEFENDANT'S EXHIBIT No. 80

Treasury Department
Internal Revenue Service
Seattle 1, Washington

Office of
Internal Revenue Agent in Charge
Seattle Division
W. J. Jones & Son, Inc.,
817 Board of Trade Building,
Portland 4, Oregon.

Gentlemen:

I enclose a copy of the report of the examination of your income tax returns for the years 1946, 1948, in connection with your claim for a refund of \$12,190.32. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Years: 1946, 1948 (See attached report for details).

If You Agree to this adjustment, the enclosed form of acceptance should be executed and forwarded to this office promptly, in order that a certificate of overassessment may be issued without unnecessary delay.

If You Do Not Agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful con-

Defendant's Exhibit No. 80—(Continued)

Revenue Agent who made prior examination: Kimberley.

With whom was examination discussed? Harold F. Smith, Sec.

Was an agreement to the findings procured? No.

Consents (date of expiration): 6/30/51 for 1946.

Claims (date and years covered): 11/4/49-1946.

Correspondence from the Bureau: None.

What other years, reported separately, were covered during this investigation? 1944 and 1947.

Other information:

This corporation had a bank overdraft close 1946; it paid a cash dividend of \$7,500.00 that year. In 1947 it paid a cash dividend of \$60,000.00. In 1948 it paid no dividend, but had an operating loss that year. At the close of 1948, its current liabilities exceeded its cash on hand. Non-application of Section 102 is recommended.

The capital stock of J. W. Jones & Son, Inc., was owned by the following:

	As at 12/31/46	1947	1948
(a) Clayton R. Jones	444 shares	364 shares	354 shares
(b) Clayton R. Jones, Jr...	77 shares	117 shares	132 shares
(b) William Jones	74 shares	114 shares	129 shares
(c) Marguerite E. Jones..	155 shares	155 shares	135 shares
	<hr/>	<hr/>	<hr/>
Total O/S	750 shares	750 shares	750 shares

(b) Sons of (a); (c) wife of (a).

Defendant's Exhibit No. 80—(Continued)

The account of Clayton R. Jones, on the books of this corporation showed the following balances:

12/31/45 Credit balance	\$11,388.60
12/31/46 Credit balance	9,874.26
12/31/47 Credit balance	26,521.91
12/31/48 Credit balance	13,003.19

In the year 1946, Jones' account was credited with \$121,763.74, face value of notes issued by Mina del Refugio, S. A., which were payable to Clayton R. Jones, and which he endorsed over to the taxpayer. Credit was also given for \$4,654.57, accrued interest on these notes at time of transfer. Clayton R. Jones endorsed these notes "without recourse."

The maker of these notes, Mina del Refugio, S. A., is a Mexican corporation, whose charter was issued in 1932. It was organized by persons in Arizona, who had through it conducted a mining operation. About 1944 it was dormant and had no assets or liabilities, but its charter had been kept alive by M. C. Little, Jr., a lawyer of Nogales, Arizona. Mr. John C. Higgins, Public Service Building, Portland, Oregon, learned of this and acquired the capital stock for a nominal consideration. The stock at the time was all issued to "Portador (bearer)" as follows:

Cert. 1, 2, 3 and 4 for 1249 shares each

Cert. 5, 6, 7 and 8 for 1 share each

The total authorized capital stock was and is 5000 shares, par value 1 peso each, or about 20c. It appears that these certificates, thus made out, were merely handed to Higgins, who thereby became the

Defendant's Exhibit No. 80—(Continued)

In the calendar year 1948, Clayton R. Jones claimed a bad debt in his personal return for \$28,222.21, and W. J. Jones & Son, Inc., has claimed a bad debt of \$134,555.21, determined as follows:

	Clayton R. Jones	W. J. Jones & Son, Inc
Face amount of notes	\$30,472.21	\$121,763.74
Less: Estimated recovery	2,250.00	8,775.00
	<hr/>	<hr/>
Remainder	28,222.21	112,988.74
Add:		
Accrued interest purchased....	none	4,654.57
Accrued interest reported as income	none (cash basis)	16,911.90
	<hr/>	<hr/>
Bad debt deduction claimed	\$28,222.21	\$134,555.21

John C. Higgins did not claim a bad debt in 1948 because he had organized on 10/1/48, the H. and H. Mines, Inc., and transferred all of his securities in mining companies thereto in exchange for its capital stock. This corporation did not file a return for the year ended 12/31/48, and appears to have elected a fiscal year. This return will be requisitioned as soon as it is determined from the Collector's office that it has been filed. It will probably claim a bad debt for the Mina del Refugio, S. A., notes. Form 917 will be submitted on Dennison E. Harris. The return of Clayton R. Jones is being obtained from the Collector's office for the year 1948.

On December 27, 1948, a special meeting of the Board of Directors of Mina del Refugio was held at 1303 Public Service Building, Portland, Oregon,

Defendant's Exhibit No. 80—(Continued)

at which it was resolved to abandon the corporation. A copy of these minutes is as follows:

Minutes of Special Meeting of Board of Directors
of
Mina del Refugio, S. A.

A special meeting of the Board of Directors of Mina del Refugio, S. A., was held at 10 o'clock a.m. on December 27, 1948, at 1303 Public Service Building, Portland, Oregon.

Present were John C. Higgins and Clayton R. Jones, constituting a quorum for the transaction of business.

Mr. Higgins acted as chairman and Mr. Jones acted as secretary.

Mr. Higgins and Mr. Jones discussed the hopeless plight into which the affairs of the Company had recently fallen. Mr. Higgins and Mr. Jones reviewed the reports of the Company's engineer, A. J. Klamt. Mr. Jones substantiated the conclusions in said reports from his personal observations made during his visits to the site of the mining operations in 1948, and particularly his last visit there, in November of 1948. On the basis of said reports and observations, which definitely established the exhaustion of all available ore capable of being mined with any hope of meeting operating expenses from the properties now owned and held under lease and option by the Company, and the failure of all plans to find other promising mining properties or to continue or resume milling operations on gambisino

Defendant's Exhibit No. 80—(Continued)

ore, Mr. Jones and Mr. Higgins agreed that the Company's mining and milling enterprise should immediately be ended and abandoned, that its saleable assets should be sold, the proceeds distributed to its creditors, its affairs should be wound up and the company should be dissolved.

Mr. Higgins and Mr. Jones then discussed the progress which had been made in dismantling the mill and mine equipment pursuant to their previous decision in the latter part of 1948 to curtail operations. Mr. Higgins submitted a copy of an agreement which he had prepared on behalf of the corporation providing for the sale of Mr. A. J. Klamt of all the structures, fixtures, equipment, and supplies connected with the mining operations of the company.

Upon motion duly made and seconded, the following resolutions were unanimously adopted.

Resolved, That the agreement confirmed in a letter dated December 27, 1948, from John C. Higgins to A. J. Klamt, a copy of which is ordered to be attached to the minutes of this meeting, be and hereby is approved and adopted by the Directors of the Company, and all acts of Mr. Higgins and Mr. Jones as officers and directors of the Company in entering into said agreement, and all acts of said persons in carrying out said agreement, and in taking all steps necessary and proper for the cessation and abandonment of all operations of the company be and hereby are ratified and approved by the Board of Directors.

Defendant's Exhibit No. 80—(Continued)

Mr. Higgins pointed out that the most that could be realized by the Company under said agreement was \$20,000, plus any additional portion of the Company's funds referred to in paragraph 3 of the agreement remaining after payment of the Company's outstanding liabilities. He stated that at most this additional sum, over and above the \$20,000 might amount to as much as \$2,500. He stated that there was no possibility that any sum over \$2,500 would be realized from this source and that the actual amount thus realized would probably be less than \$1,000. He also stated that, in his opinion, it was very doubtful whether even as much as \$20,000 would be realized by the Company from the sale of the equipment, structures and supplies. It was also explained by Mr. Higgins that paragraph eight of said agreement was inserted as a precautionary measure and that the Company did not anticipate the receipt of any money after December 31, 1948, on account of bullion payments, tax refunds or from other sources.

Mr. Jones observed that said agreement disposed of all the assets of the Corporation with the exception of the real property and mining claims owned by or under lease and option to the Company. Mr. Higgins and Mr. Jones agreed that the real property and mining claims were totally worthless. They were useless to the Company and could not be sold, since such properties have no value because of the exhaustion of all commercial ore deposits.

Defendant's Exhibit No. 80—(Continued)

Mr. Jones mentioned that the mine was flooded with water due to the cessation of pumping operations.

Upon motion duly made and seconded the following resolution was unanimously passed:

Resolved, that all real property and mining claims and all interests therein owned or held by the Company be and hereby are deemed to be worthless and the officers of the Company be and hereby are authorized and directed to abandon said property.

Mr. Higgins stated that there remained the question of what distribution should be made of the funds of the Company to be realized by the Company under the agreement with Mr. Klamt, plus any funds in the bank account of the Company referred to in paragraph 3 of said agreement. It was pointed out that there were outstanding notes of the Company and obligations for advances and equipment sales to it in the aggregate amount of more than \$300,000 which had been issued and incurred to evidence the obligation of the Company to repay the loans and advances, and for sales of equipment made from time to time by Mr. Higgins, Mr. Jones, and Mr. Dennison Harris and his family. Mr. Higgins expressed his regret that it was necessary to so bitterly disappoint the high expectations of full repayment for these loans, advances and sales, but stated that the most the Company could possibly pay on said notes and other obligations was a pro rated distribution of the above-mentioned sums which could not exceed \$22,500. Upon motion

Defendant's Exhibit No. 80—(Continued)

duly made and seconded the following resolution was unanimously passed:

Resolved, that the officers of the Company be and hereby are authorized and directed to make a pro rata distribution to the holders of the outstanding notes and other obligations of the Company of any and all funds of the Company realized under the agreement with Mr. Klamt confirmed in the letter from Mr. Higgins to Mr. Klamt dated December 27, 1948, plus any funds of the Company on deposit in its bank account after payment of all prior liabilities.

Mr. Higgins stated that the notes and other obligations of the Company, above mentioned, were obviously more than sufficient to exhaust all the assets of the Company so there was no need to make any provision for the stockholders of the Company since said stock under the circumstances was totally worthless.

Mr. Higgins and Mr. Jones then considered what disposition should be made of the corporate structure of the Company which would be nothing more than a hollow shell after December 31, 1948. Mr. Higgins and Mr. Jones determined that they were not sufficiently familiar with Mexican law to decide whether it would be most expeditious to dissolve the Company, or merely to abandon the corporate structure.

Upon motion duly made and seconded, the following resolution was unanimously passed:

Defendant's Exhibit No. 80—(Continued)

Resolved, that the officers of the Company be and hereby are directed and authorized to make whatever disposition of the corporate structure of the Company that they deem most advisable, such authority to include dissolution of the Company or abandonment of the corporate structure.

There being no further business, the meeting was adjourned.

/s/ JOHN C. HIGGINS.

/s/ CLAYTON R. JONES.

The undersigned, a director of Mina del Refugio, S. A., has read the foregoing minutes of a Special Meeting of the Board of Directors of the Company held on December 27, 1948. The undersigned hereby waives any and all notice required by law for the time, place and purpose of said meeting and hereby ratifies, approves and confirms all action taken at said meeting.

Dated as of December 27, 1948.

Nothing was ever paid on the notes of Mina del Refugio, S. A., either principal or interest, to the close of 1948. As the minutes disclose, it was estimated that about \$22,500.00 would ultimately be realized from the sale of the mining equipment and all other assets, except the mining claims and real property. The corporation resolved to abandon the

Defendant's Exhibit No. 80—(Continued)

real property and mining claims as worthless. This situation did not result in a closed transaction as at 12/31/48, and it is not clear that the capital stock represents a total loss in 1948. Provided that the capital stock and the notes are all considered as in reality the same, namely, risk capital which has the same status for income tax purposes, it is evident that the capital loss on this risk capital would come in the year that all the property of the corporation had been finally disposed of and proceeds realized. This requirement is not satisfied by establishing an estimated sum of \$22,500.00 as the amount to be realized. This estimate was divided among the note holders by agreement as follows:

John C. Higgins	50%	\$11,250.00
W. J. Jones & Son, Inc.	39%	8,775.00
Clayton R. Jones	10%	2,250.00
Dennison E. Harris	1%	225.00
		<hr/>
		\$22,500.00

The notes in question do not appear to qualify as securities, as defined in Sec. 23 (k) (3) of the Code, because not in registered form or with interest coupons attached. Because this is a corporation, there would not be a non-business debt. In the case of *Sam Schnitzer, et al., v. Commissioner*, 13 T.C. 43, the Court stated:

“A corporation's financial structure in which a wholly inadequate part of the investment is attributed to stock while the bulk is represented by bonds or other evidence of indebtedness to stockholders is lacking in the substance necessary for

Defendant's Exhibit No. 80—(Continued)

recognition for tax purposes, and must be interpreted in accordance with realities.”

For the reasons given above and in the body of this report, the deduction claimed of \$134,555.21 for bad debt in 1948 is not allowed.

Depreciation claimed was found to comply with T. D. 4422, and rates claimed are in line with those allowed in 1943 R.A.R. and considered reasonable.

Compensation of officers is paid within the 75-day period, and is reasonable. Other items of income and deduction were verified. \$48,700.00 of capital stock in Jones Pacific Co. subscribed in 1947 was cancelled at that figure in 1948, no gain or loss. Largely due to the above-mentioned bad debt deduction claimed, claims for carry-back were filed as follows:

Year of Claim	Claim	Amount of As Allowed
1944	\$30,865.50	\$3,996.95
1946	12,190.32	6,477.24
1947	38,030.29	1,830.37

/s/ CHAS. E. KIMBERLEY,
Internal Revenue Agent.

Class: Corp.

Grade: D

ebp

Statement of Total Tax Liability

[See photostate page 194 of this printed record.]

Preliminary Statement

[See pages 189 to 193 of this printed record.]

[Title of District Court and Cause.]

Civil No. 5758

CLERK'S CERTIFICATE

United States of America,

District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of complaint, answer, pre-trial order, findings of fact, conclusions of law and judgment, notice of appeal, motion for extension of time, order allowing extension of time, stipulation for order to send exhibits, order to send exhibits, affidavit of service of copy of designation, designation of record, and transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 5758, in which W. J. Jones & Son, Inc., is plaintiff and appellee, and Hugh H. Earle, Collector of Internal Revenue for the District of Oregon, is defendant and appellant; that the record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith duplicate transcript of proceedings of May 15-16, 1951, filed in this office in this cause (includes Civil 5759), Exhibits Nos. 1 to 80, inclusive, will go forward under separate cover by express.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 1st day of November, 1951.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Title of District Court and Cause.]

Civil No. 5759

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of complaint, answer, pre-trial order, findings of fact, conclusions of law, and judgment, notice of appeal, motion for extension of time, order allowing extension of time, stipulation for order to send exhibits, order to send exhibits, affidavit of service of copy of designation, designation of record, and transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 5759, in which W. J. Jones & Son, Inc., is plaintiff and appellee, and the United States of America is defendant and appellant; that the record has been prepared by me in accordance with

the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the duplicate transcript of proceedings of May 15-16, 1951, of this case also included the transcript in Civil 5758 and went forward with that appeal, as did exhibits Nos. 1 to 80, inclusive, which were shipped by express.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 1st day of November, 1951.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 13148. United States Court of Appeals for the Ninth Circuit. Hugh H. Earle, Collector of Internal Revenue for the District of Oregon, Appellant, vs. W. J. Jones & Son, Inc., a Corporation, Appellee. Transcript of Record. Appeals from the United States District Court for the District of Oregon.

Filed November 5, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

W. J. JONES & SON, INC.,
Appellee.

HUGH H. EARLE, Collector of Internal Revenue
for the District of Oregon,
Appellant,
vs.

W. J. JONES & SON, INC.,
Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL

Come now the United States of America and Hugh H. Earle, Collector of Internal Revenue for the District of Oregon, appellants above named, and for a statement of points upon which they intend to rely on this appeal say:

1. That the District Court erred in finding and holding that the plaintiff was entitled to a bad debt deduction of \$134,555.21 in computing its taxable income for the calendar year 1948.

2. That the District Court erred in finding and holding that 32 notes owned by the plaintiff in 1948, identified as Exhibits 13 to 44, inclusive, constituted

debt obligations within the meaning of Section 23 (k) of the Internal Revenue Code.

3. That the District Court erred in finding and holding that plaintiff properly charged off on its books in 1948 as a bad debt the \$134,555.21, as representing the extent to which the 32 notes, Exhibits 13 to 44, inclusive, were then considered worthless.

4. That the District Court erred in finding and holding that the advances evidenced by the 32 notes, Exhibits 13 to 44, inclusive, did not represent contributions to the Mexican corporation's capital by Clayton R. Jones.

5. That the District Court erred in finding and holding that if the stock ownership of Clayton R. Jones in the Mexican corporation or his activities in regard thereto are attributable to the plaintiff, then Findings of Fact XXIII through XXXIV support the District Court's conclusion that \$134,555.21 of plaintiff's \$138,379.48 net operating loss for 1948 was a bad debt, allowable as a deduction for 1948 under Section 23 (k) of the Internal Revenue Code.

6. That the District Court erred in finding and holding that the advances made to the Mexican corporation by Clayton R. Jones, evidenced by the 32 notes, Exhibits 13 to 44, inclusive, constituted loans, for income tax purposes, as distinguished from contributions to capital.

7. That the District Court erred in finding and

holding that Clayton R. Jones, John C. Higgins and D. E. Harris intended that their advances to the Mexican corporation should constitute loans within the meaning of the Internal Revenue laws, as distinguished from contributions to capital.

8. That the District Court erred in finding and holding that the advances made by Clayton R. Jones, John C. Higgins and D. E. Harris to the Mexican corporation created a debtor-creditor relationship within the meaning of the Internal Revenue laws.

9. That the District Court erred in basing its findings, conclusions and holdings upon the mere formal appearances of the transactions relating to the advances made to the Mexican corporation by Clayton R. Jones, John C. Higgins and D. E. Harris and ignoring the substance of said transactions.

10. That the District Court erred in finding and holding that Clayton R. Jones, John C. Higgins and D. E. Harris expected that their advances to the Mexican corporation would be repaid prior to the maturity dates of the notes issued to cover such advances.

11. That the District Court erred in finding and holding that the plaintiff is entitled to recognition for tax purposes as a separate entity distinct from Clayton R. Jones, insofar as the stock ownership of Clayton R. Jones in the Mexican corporation, and his advances thereto evidenced by notes transferred to the plaintiff, are concerned.

12. That the District Court erred in finding and

holding that the advances to the Mexican corporation were not made by the stockholders thereof in direct proportion to their stock interests.

13. That the District Court erred in failing to find and hold that the advances made by Clayton R. Jones, John C. Higgins and D. E. Harris to the Mexican corporation were intended to be, and were in fact in proportion to their stock interests.

14. That the District Court erred in finding and holding that the taxes herein sought to be recovered were excessive and were illegally and wrongfully withheld from plaintiff.

15. That the District Court erred in granting judgment herein in favor of the plaintiff and against the United States and against the defendant, Earle.

16. That the District Court erred in failing to find and hold that the advances made to the Mexican corporation by Clayton R. Jones, John C. Higgins and D. E. Harris were intended to and did constitute contributions to capital of the Mexican corporation.

17. That the District Court erred in failing to enter judgment for the defendants and against the plaintiff.

Dated this 2nd day of November, 1951, at Portland, Oregon.

/s/ HENRY L. HESS,

United States Attorney for
the District of Oregon.

/s/ DONALD W. McEWEN.

United States of America,
District of Oregon—ss.

Due and legal service of the within Statement of Points on Which Appellants Intend to Rely on Appeal is hereby accepted within the State and District of Oregon, on the 2nd day of November, 1951, by receiving a copy thereof duly certified to as a true and correct copy of the original.

/s/ WILLIAM H. KINSEY.

[Endorsed]: Filed Nov. 5, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL TO BE PRINTED

To the Clerk of the Above-Entitled Court:

The Record on Appeal having been transmitted by the Clerk of the District Court to the Clerk of the United States Court of Appeals for the Ninth Circuit for docketing, the appellants hereby designate the portions of the record to be printed as follows:

(1) Exhibits 6 to 13, inclusive, 46, 50, 52 to 80, inclusive.

(2) Exhibit 49—the stubs for stock certificates actually issued.

(3) Exhibit 51—ledger sheets for the following accounts:

Organization Expense.

Exploration & Development Expense.

Trucks and Tractors.

Office Equipment.

Camp.

Water System.

Mill Building.

Mine Equipment.

Mill Equipment.

(4) Exhibit 51—ledger sheets for accounts showing sums advanced by Clayton R. Jones, John C. Higgins and D. E. Harris.

(5) All of the remaining portions of the record.

HENRY L. HESS,

United States Attorney for
District of Oregon.

/s/ DONALD W. McEWEN,

Assistant United States Attorney, of Attorneys for
Appellants.

Service admitted.

[Endorsed]: Filed Nov. 12, 1951.

